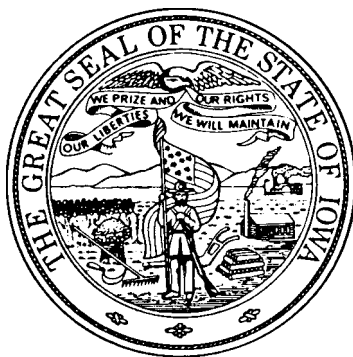


1995 IOWA CODE SUPPLEMENT

Containing

Sections of the Laws of Iowa
of a General and Permanent Nature
Enacted, Amended, Repealed or
otherwise affected by the
1995 Regular Session
of the

GENERAL ASSEMBLY OF THE
STATE OF IOWA



Published under the authority of Iowa Code chapter 2B
by the
Legislative Service Bureau
GENERAL ASSEMBLY OF IOWA
Des Moines
1995

PREFACE TO 1995 IOWA CODE SUPPLEMENT

This 1995 Iowa Code Supplement is published pursuant to Code chapter 2B. It shows sections of the laws of Iowa enacted, amended, repealed, or otherwise affected by the 1995 regular session of the Iowa General Assembly or by an earlier session if the effective date was deferred, arranged in the numerical sequence followed by the 1995 Iowa Code. However, it does not show temporary sections, such as appropriation sections, which are not to be codified.

EFFECTIVE DATES. Except as otherwise indicated in the text or in a footnote, the new sections, amendments, and repeals were effective on or before July 1, 1995. See the 1995 Iowa Acts to determine specific effective dates not shown.

NOTES. A source note following each new or amended section refers to the appropriate chapter and section number in the Iowa Acts where the new section or amendment can be found in the form it had upon passage. Repeals are indicated in the form used in the 1995 Code. Following the source note or repeal may be a footnote. A footnote to an amended section usually refers only to the amended part and not necessarily to the entire section as printed. Many of the footnotes from the 1995 Code are not included but will be corrected as necessary and appear in the 1997 Code. Following the source note or footnote for a new or amended section is an explanatory note to indicate whether the section or a part of it is new, or was amended, stricken, stricken and rewritten, or renumbered.

EDITORIAL DECISIONS. If there were multiple amendments to a section or part of a section, all changes that were duplicative or otherwise did not appear to conflict were harmonized as required under section 4.11 of the Code. It was generally assumed that a strike or repeal prevailed over an amendment to the same material and did not create an irreconcilable conflict, and that the substitution of the correct title of an officer or department as authorized by law did not create a conflict. At the end of this Supplement are Code editor's notes which explain the major editorial decisions. Section 2B.13 of the 1995 Code governs the ongoing revision of gender references, authorizes other editorial changes, and provides for the effective date of the changes.

INDEX AND TABLES. A subject matter index to new or amended sections, a table of the disposition of the 1995 Acts and any previous years' Acts codified in this Supplement, and a table of corresponding sections from the 1995 Code to the 1995 Code Supplement also appear at the end of this Supplement.

RETENTION OF CODE SUPPLEMENT VOLUMES. Users who maintain libraries of previous years' biennial hardbound Codes of Iowa should also retain the Iowa Code Supplement volumes, as the Code Supplements contain Code editor's notes, footnotes, and other aids which are not included in the subsequent hardbound Code.

Because the Iowa General Assembly meets annually, the Supplement also serves as the only record of the original codification of statutes enacted in the odd-numbered year if those statutes are amended or repealed in the next even-numbered year.

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ORDERS FOR LEGAL PUBLICATIONS, INCLUDING THE CODE SUPPLEMENT, SHOULD BE ADDRESSED TO THE IOWA STATE PRINTING DIVISION, GRIMES STATE OFFICE BUILDING, DES MOINES, IOWA 50319. TELEPHONE (515) 281-8796

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IOWA CODE SUPPLEMENT

1995

CHAPTER 1B

STATE FLAG

1B.1 Specifications of state flag.

The banner designed by the Iowa society of the Daughters of the American Revolution and presented to the state is hereby adopted as the state flag for use on all occasions where a state flag may be fittingly displayed. The design consists of three vertical stripes of blue, white, and red, the blue stripe being nearest the staff and the white stripe* being in the center. On the central white stripe is depicted a spreading eagle bearing in its beak blue streamers on which is inscribed the state motto, "*Our liberties we prize and our rights we will maintain*" in white letters, with the word "*Iowa*" in red letters below the streamers.

95 Acts, ch 1, §1

*Editor's Note: On the original design, the white stripe was about equal to the sum of the others

Section amended

1B.2 Use of state flag.

The design shall be used as the state flag and may be displayed on all proper occasions where the state

is officially represented, either at home or abroad, or wherever it may be proper to distinguish the citizens of Iowa from the citizens of other states. When displayed with the national emblem, the state flag shall in all cases be subservient to and placed beneath the stars and stripes.

95 Acts, ch 1, §2
Section amended

1B.3 Flags on public buildings.

It shall be the duty of any board of public officers charged with providing supplies for a public building in the state to provide a suitable state flag and it shall be the duty of the custodian of that public building to raise the flags of the United States of America and the state of Iowa, upon each secular day when weather conditions are favorable.

95 Acts, ch 1, §3
Section amended

CHAPTER 2

GENERAL ASSEMBLY

2.10 Salaries and expenses — members of general assembly.

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

1. Every member of the general assembly except the presiding officer of the senate, the speaker of the house, the majority and minority floor leader of each house, and the president pro tempore of the senate and speaker pro tempore of the house, shall receive an annual salary of eighteen thousand eight hundred dollars for the year 1995 and subsequent years while serving as a member of the general assembly. In addition, each such member shall receive the sum of

sixty dollars per day for expenses of office, except travel, for each day the general assembly is in session commencing with the first day of a legislative session and ending with the day of final adjournment of each legislative session as indicated by the journals of the house and senate, except that if the length of the first regular session of the general assembly exceeds one hundred ten calendar days and the second regular session exceeds one hundred calendar days, the payments shall be made only for one hundred ten calendar days for the first session and one hundred calendar days for the second session. However, members from Polk county shall receive forty-five dollars

per day. Each member shall receive a one hundred twenty-five dollar per month allowance for legislative district constituency postage, travel, telephone costs, and other expenses. Travel expenses shall be paid at the rate established by section 18.117 for actual travel in going to and returning from the seat of government by the nearest traveled route for not more than one time per week during a legislative session. However, any increase from time to time in the mileage rate established by section 18.117 shall not become effective for members of the general assembly until the convening of the next general assembly following the session in which the increase is adopted; and this provision shall prevail over any inconsistent provision of any present or future statute.

2. Reserved.

3. The speaker of the house, presiding officer of the senate, and the majority and minority floor leader of each house shall each receive an annual salary of twenty-nine thousand dollars for the year 1995 and subsequent years while serving in that capacity. The president pro tempore of the senate and the speaker pro tempore of the house shall receive an annual salary of nineteen thousand nine hundred dollars for the year 1995 and subsequent years while serving in that capacity. Expense and travel allowances shall be the same for the speaker of the house and the presiding officer of the senate, the president pro tempore of the senate and the speaker pro tempore of the house, and the majority and minority leader of each house as provided for other members of the general assembly.

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

5. The director of revenue and finance shall pay the travel and expenses of the members of the general assembly commencing with the first pay period after the names of such persons are officially certified. The salaries of the members of the general assembly shall be paid pursuant to any of the following alternative methods:

a. During each month of the year at the same time state employees are paid.

b. During each pay period during the first six months of each calendar year.

c. During the first six months of each calendar year by allocating two-thirds of the annual salary to the pay periods during those six months and one-third of the annual salary to the pay periods during the second six months of a calendar year. Each member of the general assembly shall file with the director of revenue and finance a statement as to the method the member selects for receiving payment of salary. The presiding officers of the two houses of the general assembly shall jointly certify to the director

of revenue and finance the names of the members, officers, and employees of their respective houses and the salaries and mileage to which each is entitled. Travel and expense allowances shall be paid upon the submission of vouchers to the director of revenue and finance indicating a claim for the same.

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

7. If a special session of the general assembly is convened, members of the general assembly shall receive, in addition to their annual salaries, the sum of sixty dollars per day for each day the general assembly is actually in special session, and the same travel allowances and expenses as authorized by this section. A member of the general assembly shall receive the additional per diem, travel allowances and expenses only for the days of attendance during a special session.

8. A member of the general assembly may return to the state treasury all or a part of the salary, per diem, or expenses paid to the member pursuant to this section. The member may specify the public use for the returned money. A member has no income tax liability for that portion of the member's salary or per diem which is returned to the state treasury pursuant to this subsection. The administrative officer of each house shall provide a form at the convening of each legislative session to allow legislators to return any portion of their salaries or expenses according to this section.

For amendments to subsections 1, 3, 6, and 7, effective upon the convening of the general assembly in January 1997, see 95 Acts, ch 211, §14, 17
Section not amended; footnote added

2.40 Membership in state insurance plans.

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

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

b. The member shall pay the premium for the plan selected on the same basis as a full-time state

employee excluded from collective bargaining as provided in chapter 20.

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

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

A member of the general assembly may elect to become a member of a state group insurance plan. A member of the general assembly may continue membership in a state group insurance plan without reapplication during the member's tenure as a member of consecutive general assemblies. For the purpose of electing to become a member of the state health or medical service group insurance plan, a member of the general assembly has the status of a "new hire", full-time state employee following each election of that member in a general or special election, or during the first subsequent annual open enrollment. In lieu of membership in a state health or medical group insurance plan, a member of the general assembly may elect to receive reimbursement for the costs paid by the member for a continuation of a group coverage (COBRA) health or medical insurance plan. The member shall apply for reimbursement by submitting evidence of payment for a COBRA health or medical insurance plan. The maximum reimbursement shall be no greater than the state's contribution for health or medical insurance family plan II. A member of the general assembly who elects to become a member of a state health or medical group insurance plan shall be exempted from preexisting medical condition waiting periods. A member of the general assembly may change programs or coverage under the state health or medical service group insurance plan during the month of January of odd-numbered years, but program and coverage change selections shall be subject to the enrollment rules established for full-time state employees excluded from collective bargaining as provided in chapter 20. A person who has been a member of the general assembly for two years and who has elected to be a member of a state health or medical group insurance plan may continue to be a member of such state health or medical group insurance plan by requesting continuation in writing to the finance officer within thirty-one days after leaving office. The continuing former member of the general assembly shall pay the total premium for the state plan and shall have the same rights to change programs or coverage as state employees. In the event of the death of a former member of the general assembly who has elected to continue to be a member of a state health or medical group insurance plan, the surviving spouse of the former member whose insurance would otherwise terminate because of the death of the former member may elect to continue to be a member of such state health or medical group insurance plan by requesting continuation in writing to the finance officer within thirty-one days after the death of the

former member. The surviving spouse of the former member shall pay the total premium for the state plan and shall have the same rights to change programs or coverage as state employees.

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

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

b. The part-time employee shall pay the total premium.

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

d. (1) A part-time employee of the general assembly who elects membership in a state group insurance plan shall state each year whether the membership is to extend through the interim period between consecutive sessions of the general assembly.

(2) If the membership is to extend through the interim period the part-time employee shall authorize payment of the total annual premium through direct payment of the monthly premium for the plan selected to the state group insurance plan provider.

(3) The part-time employee shall notify the finance officer within thirty-one days after the conclusion of the general assembly whether the person's decision to extend the membership through the interim period is confirmed.

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

f. A part-time employee of the general assembly who elects membership in a state life insurance plan shall authorize payment of the premium through a total of two payments during each annual period made to the department of personnel on dates prescribed by the department.

95 Acts, ch 211, §15

Subsection 1, unnumbered paragraph 2 amended

2.47A Powers and duties of legislative capital projects committee.

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

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

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

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

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

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

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

a. Gather information relative to capital projects, for the purpose of aiding the general assembly to properly appropriate moneys for capital projects.

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

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

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

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

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

95 Acts, ch 214, §1
Subsection 1, paragraph d amended

CHAPTER 2B

LEGAL PUBLICATIONS

2B.13 Editorial powers and duties.

1. The Iowa Code editor in preparing the copy for an edition of the Iowa Code or a Code Supplement, and the administrative code editor in preparing the copy for an edition of the Iowa administrative code or bulletin may:

a. Correct misspelled words and grammatical and clerical errors including punctuation but without changing the meaning.

b. Correct internal references to sections which are cited erroneously or have been repealed, and names of agencies, officers, or other entities which have been changed, when there appears to be no doubt as to the proper methods of making the corrections. The Code editor shall maintain a record of the corrections made under this paragraph. The record shall be available to the public.

c. Transfer, divide, or combine sections or parts of sections and add or amend headnotes to sections and subsections. Pursuant to section 3.3, the headnotes are not part of the law.

2. The Iowa Code editor may prepare and publish comments deemed necessary for a proper explanation of the manner of printing a section or chapter of the Iowa Code.

3. The Iowa Code editor, in preparing the copy for an edition of the Iowa Code or a Code Supplement,

and the administrative code editor in preparing the copy for an edition of the Iowa administrative code, shall edit the copy in order that words which designate one gender are changed to reflect both genders when the provisions of law apply to persons of both genders.

4. The Iowa Code editor shall seek direction from the senate committee on judiciary and the house committee on judiciary when making Iowa Code or Code Supplement changes, and the administrative code editor shall seek direction from the administrative rules review committee and the administrative rules coordinator when making Iowa administrative code changes, which appear to require substantial editing and which might otherwise be interpreted to exceed the scope of the authority granted in this section.

5. The Iowa Code editor and the administrative code editor shall maintain a record of the changes made under this section. The record shall be available to the public.

6. The Iowa Code editor and the administrative code editor shall not make editorial changes which go beyond the authority granted in this section or other law.

7. The effective date of all editorial changes in an edition of the Iowa Code or a Code Supplement is the

date the legislative council approves the selling price for that publication. The effective date of all editorial changes for the Iowa administrative code is the date

those changes are published in the Iowa administrative code.

95 Acts, ch 67, §1
Subsection 4 amended

CHAPTER 4

CONSTRUCTION OF STATUTES

4.1 Rules.

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

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

2. "*Child*" includes child by adoption.

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

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

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

6. *Deed — bond — indenture — undertaking.* The word "*deed*" is applied to an instrument conveying lands, but does not imply a sealed instrument; and the words "*bond*" and "*indenture*" do not necessarily imply a seal, and the word "*undertaking*" means a promise or security in any form.

7. *Executor — administrator.* The term "*executor*" includes administrator, and the term "*administrator*" includes executor, where the subject matter justifies such use.

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

9. *Highway — road.* The words "*highway*" and "*road*" include public bridges, and may be held equivalent to the words "*county way*", "*county road*", "*common road*", and "*state road*".

10. *Issue.* The word "*issue*" as applied to descent of estates includes all lawful lineal descendants.

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

12. "*Judicial officer*" means a supreme court justice, a judge of the court of appeals, a district judge, a district associate judge, or a magistrate. The term

also includes a person who is temporarily serving as a justice, judge, or magistrate as permitted by section 602.1612 or 602.9206.

13. *Land — real estate.* The word "*land*" and the phrases "*real estate*" and "*real property*" include lands, tenements, hereditaments, and all rights thereto and interests therein, equitable as well as legal.

13A. "*Livestock*" includes but is not limited to an animal classified as an ostrich, rhea, or emu.

14. "*Magistrate*" means a judicial officer appointed under chapter 602, article 6, part 4.

15. *Mentally ill.* The words "*mentally ill person*" include mental retardates, psychotic persons, severely depressed persons and persons of unsound mind. A person who is hospitalized or detained for treatment of mental illness shall not be deemed or presumed to be incompetent in the absence of a finding of incompetence made pursuant to section 229.27.

16. *Month — year — A.D.* The word "*month*" means a calendar month, and the word "*year*" and the abbreviation "*A.D.*" are equivalent to the expression "*year of our Lord*".

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

18. *Numerals — figures.* The Roman numerals and the Arabic figures are to be taken as parts of the English language.

19. *Oath — affirmation.* The word "*oath*" includes affirmation in all cases where an affirmation may be substituted for an oath, and in like cases the word "*swear*" includes "*affirm*".

20. *Person.* Unless otherwise provided by law, "*person*" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

21. *Personal property.* The words "*personal property*" include money, goods, chattels, evidences of debt, and things in action.

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

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

24. *Property.* The word “*property*” includes personal and real property.

25. *Quorum.* A quorum of a public body is a majority of the number of members fixed by statute.

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

27. “*Rule*” includes “*regulation*”.

28. *Seal.* Where the seal of a court, public office or officer, or public or private corporation, may be required to be affixed to any paper, the word “*seal*” shall include an impression upon the paper alone, as well as upon wax or a wafer affixed thereto or an official ink stamp if a notarial seal.

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

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

- a. The word “*shall*” imposes a duty.
- b. The word “*must*” states a requirement.
- c. The word “*may*” confers a power.

31. *Sheriff.* The term “*sheriff*” may be extended to any person performing the duties of the sheriff, either generally or in special cases.

32. *State.* The word “*state*”, when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words “*United States*” may include the said district and territories.

33. *Tense.* Words in the present tense include the future.

34. *Time — legal holidays.* In computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday. However, when by the provisions of a statute or rule prescribed under authority of a statute, the last day for the commencement of an action or proceedings, the filing of a pleading or motion in a pending action or proceedings, or the perfecting or filing of an appeal from the decision or award of a court, board, commission, or official falls on a Saturday, a Sunday, a day on which the office of the clerk of the district court is closed in

whole or in part pursuant to the authority of the supreme court, the first day of January, the third Monday in January, the twelfth day of February, the third Monday in February, the last Monday in May, the fourth day of July, the first Monday in September, the eleventh day of November, the fourth Thursday in November, the twenty-fifth day of December, and the following Monday when any of the foregoing named legal holidays fall on a Sunday, and any day appointed or recommended by the governor of Iowa or the president of the United States as a day of fasting or thanksgiving, the time shall be extended to include the next day which the office of the clerk of the court or the office of the board, commission, or official is open to receive the filing of a commencement of an action, pleading or a motion in a pending action or proceeding, or the perfecting or filing of an appeal.

35. “*United States*” includes all the states.

36. The word “*week*” means seven consecutive days.

37. *Will.* The word “*will*” includes codicils.

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

39. *Written — in writing — signature.* The words “*written*” and “*in writing*” may include any mode of representing words or letters in general use. A signature, when required by law, must be made by the writing or markings of the person whose signature is required. If a person is unable due to a physical handicap to make a written signature or mark, that person may substitute the following in lieu of a signature required by law:

a. The handicapped person’s name written by another upon the request and in the presence of the handicapped person; or,

b. A rubber stamp reproduction of the handicapped person’s name or facsimile of the actual signature when adopted by the handicapped person for all purposes requiring a signature and then only when affixed by that person or another upon request and in the handicapped person’s presence.

40. The word “*year*” means twelve consecutive months.

CHAPTER 6B

PROCEDURE UNDER EMINENT DOMAIN

6B.3 Application — recording — notice — time for appraisal — new proceedings.

Such proceedings shall be instituted by a written application filed with the chief judge of the judicial district of the county in which the land sought to be condemned is located. Said application shall set forth:

1. A description of all the property in the county, affected or sought to be condemned, by its congressional numbers, in tracts not exceeding one-sixteenth of a section, or, if the land consists of lots, by the numbers of the lot and block, and plat designation.

2. A plat showing the location of the right-of-way or other property sought to be condemned with reference to such description.

3. The names of all record owners of the different tracts of land sought to be condemned, or otherwise affected by such proceedings, and of all record holders of liens and encumbrances on such lands; also the place of residence of all such persons so far as known to the applicant.

4. The purpose for which condemnation is sought.

5. A request for the appointment of a commission to appraise the damages.

6. If the damages are to be paid by the state and the land to be condemned is within an agricultural area as provided in chapter 352, a statement disclosing whether any of that land is classified as class I or class II land under the United States department of agriculture natural resources conservation service land capability classification system contained in the agriculture handbook number 210, 1961 edition and, if so classified, stating that the class I or class II land is reasonably necessary for the work of internal improvement for which condemnation is sought.

7. The applicant shall promptly certify that its application for condemnation has been approved by the chief judge and shall file the original approved application with the county recorder in the manner required under section 6B.37. The county recorder shall file and index the application in the record of deeds and preserve the application as required by sections 6B.38 and 558.55. The filing and indexing constitute constructive notice to all parties that a proceeding to condemn the property is pending and that the applicant has the right to acquire the property from all owners, lienholders, and encumbrancers whose interests are of record at the time of the filing. When indexed, the proceeding is considered pending so as to charge all persons not having an interest in the property with notice of its pendency, and while pending no interest can be acquired by the third parties in the property against the rights of the applicant. If the appraisal of damages is not made within one hundred twenty days, the proceedings instituted under this section are terminated and

all rights and interests of the applicant arising out of the application for condemnation terminate. The applicant may reinstitute a new condemnation proceeding at any time. The reinstated proceedings are entirely new proceedings and not a revival of the terminated proceeding.

95 Acts, ch 216, §25

Subsection 6, reference to federal agency updated

6B.24 Reduction of damages — interest on increased award.

If the amount of damages awarded by the commissioners is decreased on appeal, the reduced amount shall be paid to the landowner. If the amount of damages awarded by the commissioners is increased on appeal, interest shall be paid from the date of the condemnation. Interest shall not be paid on any amount which was previously paid. Interest shall be calculated at an annual rate equal to the coupon issue yield equivalent, as determined by the United States secretary of the treasury, of the average accepted auction price for the last auction of fifty-two-week United States treasury bills settled immediately before the date of the award.

95 Acts, ch 135, §1

Section amended

6B.42 Eminent domain — payment to displaced persons.

1. A utility or railroad subject to section 327C.2, or chapters 476, 478, 479, and 479B, authorized by law to acquire property by condemnation, which acquires the property of a person or displaces a person for a program or project which has received or will receive federal financial assistance as defined in section 316.1, shall provide to the person in addition to any other sums of money in payment of just compensation, the payments and assistance required by law, in accordance with chapter 316.

2. A person aggrieved by a determination made by a utility as to eligibility for relocation assistance, a payment, or the amount of the payment, upon application, may have the matter reviewed by the utilities division of the department of commerce.

3. A person aggrieved by a determination made by a railroad as to eligibility for relocation assistance, a payment, or the amount of the payment, upon application, may have the matter reviewed by the state department of transportation.

4. A utility or railroad subject to this section that proposes to displace a person shall inform the person of the person's right to receive relocation assistance and payments, and of an aggrieved person's right to appeal to the utilities division of the department of commerce or the state department of transportation.

95 Acts, ch 192, §1

Subsection 1 amended

CHAPTER 7G

IOWA STATEHOOD SESQUICENTENNIAL

7G.1 Iowa statehood sesquicentennial commission.

1. *Organization.* An Iowa statehood sesquicentennial commission is established in the office of the governor. The commission shall be chartered and shall operate as a nonprofit corporation within the state of Iowa, according to the provisions of chapter 504A.

2. *Purpose.* The purpose of the commission shall be to plan, coordinate, and administer activities and programs relating to the celebration of the sesquicentennial of Iowa statehood which occurs in the year 1996.

3. *Membership.* The commission shall consist of twenty-five members, five of whom shall be appointed by the governor, and twenty of whom shall be selected by leaders of the general assembly. Of the five members appointed by the governor, one member shall be the administrator of the state historical society within the department of cultural affairs. Of the twenty members selected by leaders of the general assembly, five members each, who may be legislators or citizens, shall be selected by the majority leader of the senate and the speaker of the house, and the minority leaders of each body respectively. The governor shall appoint the chairperson and co-chairperson of the commission, subject to confirmation by the senate. Persons making appointments shall consult with one another to ensure that the commission is balanced by gender, political affiliation, and geographic location, and to ensure selection of members representing diverse interest groups. The provisions of chapters 21 and 22 shall apply to meetings and records of the commission.

4. *Rulemaking authority.* The commission may adopt rules in accordance with chapter 17A in order to accomplish the purpose of the commission.

5. *Authority.* The commission may receive and make grants, receive and expend appropriations,

contract for services, hold licenses and copyrights, and otherwise act as is necessary to accomplish the purpose of the commission.

6. *Fund established.* The sesquicentennial fund is established as a separate fund in the state treasury under the control of the commission.

7. *Funds received.* All funds received by the commission, including but not limited to gifts, transfers, endowments, application and other fees related to the issuance of sesquicentennial motor vehicle registration plates pursuant to section 321.34, subsection 14, moneys from the sale of mementos and products related to the purposes of the commission, and appropriations, shall be credited to the sesquicentennial fund and are appropriated to the commission to be invested or used to support the activities of the commission. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state.

8. *Personnel.*

a. The commission may employ personnel, including an executive director whose salary shall not exceed executive branch pay grade classification 40, to administer its programs and services. The personnel shall be considered state employees.

b. Personnel employed by the commission shall be exempt from the merit system provisions of chapter 19A.

9. *Expiration.* The commission shall expire no later than June 30, 1997. Upon expiration, all fund balances from appropriations of state funds shall be returned to the general fund of the state, and all other assets shall be transferred to the Iowa historical foundation authorized pursuant to section 303.9, subsection 3, subject to any conditions or restrictions previously placed on the assets.

95 Acts, ch 211, §16

Subsection 8, paragraph a amended

CHAPTER 8

DEPARTMENT OF MANAGEMENT — BUDGET AND FINANCIAL CONTROL ACT

8.22A Revenue estimating conference.

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

2. The conference shall meet as often as deemed necessary, but shall meet at least quarterly. The conference may use sources of information deemed appropriate.

3. By December 15 of each fiscal year the conference shall agree to a revenue estimate for the fiscal

year beginning the following July 1. That estimate shall be used by the governor in the preparation of the budget message under section 8.22 and by the general assembly in the budget process. If the conference agrees to a different estimate at a later meeting which projects a greater amount of revenue than the initial estimate amount agreed to by December 15, the governor and the general assembly shall continue to use the initial estimate amount in the budget process for that fiscal year. However, if the conference agrees to a different estimate at a later

meeting which projects a lesser amount of revenue than the initial estimate amount, the governor and the general assembly shall use the lesser amount in the budget process for that fiscal year. As used in this subsection, "later meeting" means only those later meetings which are held prior to the conclusion of the regular session of the general assembly.

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

5. At the meeting in which the conference agrees to the revenue estimate for the succeeding fiscal year in accordance with the provisions of subsection 3, the conference shall also agree to the following estimate which shall be used by the governor and the general assembly in preparation of the budget message under section 8.22 and the general assembly in the budget process for the succeeding fiscal year:

The amount of lottery revenues for the following fiscal year to be available for disbursement following the deductions made pursuant to section 99E.10, subsection 1.

95 Acts, ch 214, §5
NEW subsection 5

8.23 Annual departmental estimates.

On or before October 1, prior to each legislative session, all departments and establishments of the government shall transmit to the director, on blanks to be furnished by the director, estimates of their expenditure requirements, including every proposed expenditure, for the ensuing fiscal year, classified so as to distinguish between expenditures estimated for administration, operation, and maintenance, and the cost of each project involving the purchase of land or the making of a public improvement or capital outlay of a permanent character, together with supporting data and explanations as called for by the director. The budget estimates shall include for those agencies which pay for energy directly a line item for energy expenses itemized by type of energy and location. The estimates of expenditure requirements shall be based upon seventy-five percent of the funding provided for the current fiscal year accounted for by program reduced by the historical employee vacancy factor in form specified by the director and the remainder of the estimate of expenditure requirements prioritized by program. The estimates shall be accompanied with performance measures for evaluating the effectiveness of the program. If a department or establishment fails to submit estimates within the time specified, the legislative fiscal bureau shall use the amounts of the appropriations to the department or establishment for the fiscal year in process at the time the estimates are required to be submitted as the amounts for the department's or establishment's request in the documents submitted to the general assembly for the ensuing fiscal year and the governor shall cause estimates to be prepared for that depart-

ment or establishment as in the governor's opinion are reasonable and proper. The director shall furnish standard budget request forms to each department or agency of state government.

On or before November 15 all departments and establishments of government and the judicial department shall transmit to the department of management and the legislative fiscal bureau estimates of their receipts and expenditure requirements from federal or other nonstate grants, receipts, and funds for the ensuing fiscal year. The transmittal shall include the names of the grantor and the grant or the source of the funds, the estimated amount of the funds, and the planned expenditures and use of the funds. The format of the transmittal shall be specified by the legislative fiscal bureau.

95 Acts, ch 214, §20
Unnumbered paragraph 1 amended

8.35A Information to be given to legislative fiscal bureau.

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

2. Commencing October 1, the director shall provide weekly budget tapes in the form and level of detail requested by the legislative fiscal bureau reflecting finalized agency budget requests for the following fiscal year as submitted to the governor. The director shall transmit all agency requests in final form to the legislative fiscal bureau by November 15. Final budget records containing the governor's recommendation and final agency requests shall be transmitted to the legislative fiscal bureau by January 1 or no later than the date the governor's budget document is delivered to the printer. The governor's recommendation included on this record shall be considered confidential by the legislative fiscal bureau until it is made public by the governor. The legislative fiscal bureau shall use this data in the preparation of information for the legislative appropriation process.

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

4. A government agency which receives state funds directly from the state or indirectly through a political subdivision as directed by statute and which is not a city, county, or school district is subject to this subsection. A government agency which is subject to this subsection shall submit a copy of its budget to the

legislative fiscal bureau, identifying it as being submitted under this subsection, when the budget of that government agency has received approval from the governing head or body of that agency. The copy of the budget submitted to the legislative fiscal bureau shall be on the budget forms provided by the department of management to state agencies under this chapter. The government agency shall also submit a statement identifying any funds available to the agency which are not included in the budget.

95 Acts, ch 214, §21
Subsection 2 amended

8.46 Lease-purchase — reporting.

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

a. “*Installment acquisition*” includes, but is not limited to, an arrangement in which title of ownership passes when the first installment payment is made.

b. “*Lease-purchase arrangement*” includes, but is not limited to, an arrangement in which title of ownership passes when the final installment payment is made.

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

2. At least thirty days prior to entering into a contract involving a lease-purchase or installment acquisition arrangement in which any part or the total amount of the contract is at least fifty thousand dollars, a state agency shall notify the legislative fiscal bureau concerning the contract. The legislative fiscal bureau shall compile the notifications for submission to the legislative fiscal committee of the legislative council. The notification is required regardless of the source of payment for the lease-purchase or installment acquisition arrangement. The notification shall include all of the following information:

a. A description of the object of the lease-purchase or installment acquisition arrangement.

b. The proposed terms of the contract.

c. The cost of the contract, including principal and interest costs. If the actual cost of a contract is not known at least thirty days prior to entering into the contract, the state agency shall estimate the principal and interest costs for the contract.

d. An identification of the means and source of payment of the contract.

e. An analysis of consequences of delaying or abandoning the commencement of the contract.

3. The legislative fiscal committee shall report to the legislative council concerning the notifications it receives pursuant to this section.

95 Acts, ch 214, §2
Section amended

ECONOMIC EMERGENCY FUND, CASH RESERVE FUND, AND REBUILD IOWA INFRASTRUCTURE FUND

8.55 Iowa economic emergency fund.

1. The Iowa economic emergency fund is created. The fund shall be separate from the general fund of

the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. The moneys in the fund shall not revert to the general fund, notwithstanding section 8.33, unless and to the extent the fund exceeds the maximum balance. However, the fund shall be considered a special account for the purposes of section 8.53.

2. The maximum balance of the fund is the amount equal to five percent of the adjusted revenue estimate for the fiscal year. If the amount of moneys in the Iowa economic emergency fund is equal to the maximum balance, moneys in excess of this amount shall be transferred to the general fund.

3. The moneys in the Iowa economic emergency fund may be appropriated by the general assembly only in the fiscal year for which the appropriation is made. The moneys shall only be appropriated by the general assembly for emergency expenditures. However, except as provided in section 8.58, the balance in the Iowa economic emergency fund may be used in determining the cash position of the general fund of the state for the payment of state obligations.

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

95 Acts, ch 214, §13
Subsection 4 amended

8.56 Cash reserve fund.

1. A cash reserve fund is created in the state treasury. The cash reserve fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state except in determining the cash position of the state as provided in subsection 3. The moneys in the cash reserve fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the cash reserve fund shall be credited to the rebuild Iowa infrastructure fund created in section 8.57. Moneys in the cash reserve fund may be used for cash flow purposes provided that any moneys so allocated are returned to the cash reserve fund by the end of each fiscal year. However, the fund shall be considered a special account for the purposes of section 8.53.

2. The maximum balance of the cash reserve fund is the amount equal to the cash reserve goal percentage, as defined in section 8.57, multiplied by the adjusted revenue estimate for the general fund of the state for the current fiscal year.

3. The moneys in the cash reserve fund may be appropriated by the general assembly in accordance with subsection 4 only in the fiscal year for which the appropriation is made. The moneys shall only be appropriated by the general assembly for nonrecurring emergency expenditures and shall not be appropriated for payment of any collective bargaining agreement or arbitrator's decision negotiated or awarded under chapter 20. However, except as provided in section 8.58, the balance in the cash reserve

fund may be used in determining the cash position of the general fund of the state for payment of state obligations.

4. *a.* Except as provided in subsection 1, an appropriation shall not be made from the cash reserve fund unless the appropriation is in accordance with all of the following:

(1) The appropriation is contained in a bill or joint resolution in which the appropriation is the only subject matter of the bill or joint resolution.

(2) The bill or joint resolution states the reasons the appropriation is necessary.

b. In addition to the requirements of paragraph "a", an appropriation shall not be made from the cash reserve fund which would cause the fund's balance to be less than three percent of the adjusted revenue estimate for the year for which the appropriation is made unless the bill or joint resolution is approved by vote of at least three-fifths of the members of both chambers of the general assembly and is signed by the governor.

95 Acts, ch 214, §14
Subsection 1 amended

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

1. *a.* The "cash reserve goal percentage" for fiscal years beginning on or after July 1, 1995, is five percent of the adjusted revenue estimate. For each fiscal year beginning on or after July 1, 1995, in which the appropriation of the surplus existing in the general fund of the state at the conclusion of the prior fiscal year pursuant to paragraph "b" was not sufficient for the cash reserve fund to reach the cash reserve goal percentage for the current fiscal year, there is appropriated from the general fund of the state an amount to be determined as follows:

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

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

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

b. The surplus existing in the general fund of the state at the conclusion of the fiscal year is appropriated for distribution in the succeeding fiscal year as provided in subsections 2 and 3. Moneys credited to the cash reserve fund from the appropriation made in this paragraph shall not exceed the amount necessary for the cash reserve fund to reach the cash reserve goal percentage for the succeeding fiscal year.

As used in this paragraph, "surplus" means the excess of revenues and other financing sources over expenditures and other financing uses for the general fund of the state in a fiscal year.

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

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

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

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

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

b. Moneys in the infrastructure fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the infrastructure fund shall be credited to the infrastructure fund.

c. Moneys in the fund in a fiscal year shall be used as directed by the general assembly for public infrastructure-related expenditures.

d. The general assembly may provide that all or part of the moneys deposited in the GAAP deficit reduction account created in this section shall be transferred to the infrastructure fund in lieu of appropriation of the moneys to the Iowa economic emergency fund.

95 Acts, ch 209, §11, 12; 95 Acts, ch 214, §15, 16
Amounts to be credited to the Iowa economic emergency fund and the rebuild Iowa infrastructure fund; 95 Acts, ch 213, §1, 6
Subsection 1, paragraph a stricken and rewritten
Subsection 1, paragraph b amended
Subsections 2 and 5 amended

8.58 Exemption from automatic application.

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

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

95 Acts, ch 214, §17
Section amended

8.63 Innovations fund.

1. An innovations fund is created in the state treasury under the control of the department of management for the purpose of stimulating and encouraging innovation in state government by the awarding of repayable loans to state agencies.

2. The director of the department of management shall establish an eight-member committee to be called the state innovations fund committee. The committee shall review all requests for funds and approve loans of funds if the committee determines that an agency request would result in cost savings or added revenue to the general fund of the state. Eligible projects are projects which cannot be funded from an agency's operating budget without adversely affecting the agency's normal service levels. Projects may include, but are not limited to, purchase of advanced technology, contracting for expert services, and acquisition of equipment or supplies.

3. A state agency seeking a loan from the innovations fund shall complete an application form designed by the state innovations fund committee which employs a return on investment concept and demonstrates how state general fund expenditures will be reduced or how state general fund revenues will increase. Minimum loan requirements for state agency requests shall be determined by the committee. As an incentive to increase state general fund revenues, an agency may retain up to fifty percent of savings realized in connection with a loan from the innovations fund. The amount retained shall be determined by the innovations fund committee.

4. In order for the innovations fund to be self-supporting, the innovations fund committee shall establish repayment schedules for each innovation fund loan awarded. Agencies shall repay the funds over a period not to exceed five years with interest, at a rate to be determined by the innovations fund committee.

5. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the innovations fund shall be credited to the innovations fund. Notwithstanding section 8.33, moneys remaining in the innovations fund at the end of a fiscal year shall not revert to the general fund of the state.

95 Acts, ch 214, §18
NEW section

CHAPTER 8D

IOWA COMMUNICATIONS NETWORK

Studies of possible sale of network and possible conversion of network into public utility; appropriation; 95 Acts, ch 131; 95 Acts, ch 210, §4
 Appropriations for connection of Part III users;
 legislative intent regarding plan for additional connections;
 construction and state ownership of identified sites;
 metro connections; 95 Acts, ch 217, §1-3

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

1. *Commission established.* A telecommunications and technology commission is established with the sole authority to supervise the management, development, and operation of the network and ensure that all components of the network are technically compatible. The commission shall ensure that the network operates in an efficient and responsible manner consistent with the provisions of this chapter for the purpose of providing the best economic service attainable to the network users consistent with the state's financial capacity. The commission shall ensure that educational users and the use, design, and implementation for educational applications be given the highest priority concerning use of the network. The commission shall provide for the centralized, coordinated use and control of the network.

2. *Members.* The commission is composed of three members appointed by the governor and subject to confirmation by the senate. Members of the commission shall not serve in any manner or be employed by an authorized user of the network or by an entity seeking to do or doing business with the network. The governor shall appoint a member as the chairperson of the commission from the three members appointed by the governor, subject to confirmation by the senate. Members of the commission shall serve six-year staggered terms as designated by the governor and appointments to the commission are subject to the requirements of sections 69.16, 69.16A, and 69.19. Vacancies shall be filled by the governor for the duration of the unexpired term. The salary of the members of the commission shall be twenty thousand dollars per year, except that the salary of the chairperson shall be twenty-five thousand dollars per year. Members of the commission shall also be reimbursed for all actual and necessary expenses incurred in the performance of duties as members. Meetings of the commission shall be held at the call of the chairperson of the commission. In addition to the members appointed by the governor, the auditor of state or the auditor's designee shall serve as a nonvoting, ex officio member of the commission.

The benefits and salary paid to the members of the commission shall be adjusted annually equal to the average of the annual pay adjustments, expense reimbursements, and related benefits provided under collective bargaining agreements negotiated pursuant to chapter 20.

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

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

b. Adopt rules pursuant to chapter 17A as deemed appropriate and necessary, and directly related to the implementation and administration of the duties of the commission. The commission, in consultation with the department of general services, shall also adopt and provide for standard communications procedures and policies relating to the use of the network which recognize, at a minimum, the need for reliable communications services.

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

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

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

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

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

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

(d) Ensure that rural communities have access to comparable services to the services provided in urban

areas resulting from any plans to construct, install, repair, or maintain any part of the network.

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

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

f. Annually prepare a written five-year financial plan for the network which shall be provided to the general assembly and the governor no later than January 15 of each year. The plan shall include estimates for income and expenses for the network for the five-year period and the actual income and expenses for the preceding fiscal year. The plan shall include the amount of general fund appropriations to be requested for the payment of operating expenses and debt service. The plan shall also include any recommendations of the commission related to changes in the system and other items as deemed appropriate by the commission. The recommendations of the commission contained in the plan shall include a detailed plan for the connection of all public schools to the network, including a discussion and evaluation of all potential financing options, an estimate of all costs incurred in providing such connections, and a schedule for completing such connections, including the anticipated final completion date for such connections.

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

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

i. Evaluate existing and projected rates for use of the system and ensure that rates are sufficient to pay for the operation of the system excluding the cost of construction and lease costs for Parts I, II, and III. The commission shall establish all hourly rates to be charged to all authorized users for the use of the network. A fee established by the commission to be charged to a hospital licensed pursuant to chapter 135B, a physician clinic, or the federal government shall be at an appropriate rate so that, at a minimum,

there is no state subsidy related to the costs of the connection or use of the network related to such user.

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

95 Acts, ch 210, §1

Subsection 3, paragraph i amended

8D.13 Iowa communications network.

1. Moneys in the Iowa communications network fund are appropriated to the Iowa telecommunications and technology commission for purposes of providing financing for the procurement, operation, and maintenance of the Iowa communications network with sufficient capacity to serve the video, data, and voice requirements of the educational telecommunications system consisting of Part I, Part II, and Part III, and other public and private agencies.

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

a. "Part I" means the communications connections between central switching and institutions under the control of the board of regents, nonprofit institutions of higher education eligible for tuition grants, and the regional switching centers for the remainder of the network.

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

c. "Part III" means the communications connection between the secondary switching centers and the agencies defined in section 8D.2, subsections 4 and 5, excluding state agencies, institutions under the control of the board of regents, nonprofit institutions of higher education eligible for tuition grants, and the judicial department, judicial district departments of correctional services, hospitals and physician clinics, agencies of the federal government, and post offices.

3. The financing for the procurement costs for the entirety of Part I except for the communications connections between central switching and institutions under the control of the board of regents, and nonprofit institutions of higher education eligible for tuition grants, and for the video, data, and voice capacity for state agencies and for Part II and Part III, shall be provided by the state. The financing for the procurement and maintenance costs for Part III shall be provided by the state. A local school board, governing authority of a nonpublic school, or an area education agency board may elect to provide one hundred percent of the financing for the procurement and maintenance costs for Part III to become part of the network. The basis for the amount of state financing is one hundred percent of a single interactive audio and interactive video connection for Part III, and such data and voice capacity as is necessary. If a school board, governing authority of a nonpublic school, or area education agency board elects to provide one hundred percent of the financing for the leasing costs for Part III, the school district or area education agency may become part of the network as

soon as the network can reasonably connect the district or agency. A local school board, governing authority of a nonpublic school, or an area education agency board may also elect not to become part of the network. Construction of Part III, related to a school board, governing authority of a nonpublic school, or area education agency board which provides one hundred percent of the financing for the leasing costs for Part III, may proceed as determined by the commission and consistent with the purpose of this chapter.

4. The commission shall develop the requests for proposals that are needed for the Iowa communications network with sufficient capacity to serve the video, data, and voice requirements of state agencies and for educational telecommunications applications. The commission shall develop a request for proposals for each of the systems that will make up the network. The commission may develop a request for proposals for each definitive component of the network or the commission may provide in the request for proposals for each such system that separate contracts may be entered into for each definitive component covered by the request for proposals. The requests for proposals may be for the purchase, lease-purchase, or lease of the component parts of the network consistent with the provisions of this chapter, may require maintenance costs to be identified, and the resulting contract may provide for maintenance for parts of the network. The master contract may provide for electronic classrooms, satellite equipment, receiving equipment, studio and production equipment, and other associated equipment as required.

5. The state shall lease all fiberoptic cable facilities or facilities with DS-3 capacity for Part III connections for which state funding is provided. The state shall lease all fiberoptic cable facilities or facilities with DS-3 or DS-1 capacity for the judicial department, judicial district department of correctional services, and state agency connections for which state funding is provided. Such facilities shall be leased from qualified providers. The state shall not own such facilities, except for those facilities owned by the state as of January 1, 1994.

The lease provisions of this subsection do not apply to a school district which elects to provide one hundred percent of the financing for the district's connection.

6. It is the intent of the general assembly that during the implementation of Parts I and II of the system, the department of general services shall employ a consultant to report to it on the impact of changing technology on the potential cost and capabilities of the system. It is also the intent of the general assembly that the department of education shall study new techniques in distant teaching. These reports shall be made available to the general assembly.

7. The commission shall be responsible for the network design and shall be responsible for the implementation of each component of the network as it is incorporated into the network. The final design selected shall optimize the routing for all users in

order to assure maximum utilization by all agencies of the state. Efficiencies achieved in the implementation of the network shall be used to fund further implementation and enhancement of the network, and shall be considered part of the operational cost of the network. The commission shall be responsible for all management, operations, control switching, diagnostics, and maintenance functions of network operations as provided in this chapter. The performance of these duties is intended to provide optimal utilization of the facilities, and the assurance that future growth requirements will be provided for, and that sufficient network capacity will be available to meet the needs of all users.

8. The education telecommunications council shall review all requests for grants for educational telecommunications applications, if they are a part of the Iowa communications network, to ensure that the educational telecommunications application is consistent with the telecommunications plan. All other grant requests shall be reviewed as determined by the commission. If the education telecommunications council finds that a grant request is inconsistent with the telecommunications plan, the grant request shall not be allowed.

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

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

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

12. The commission, on its own or as recommended by an advisory committee of the commission and approved by the commission, shall permit a fee to be charged by a receiving site to the originator of the communication provided on the network. The fee charged shall be for the purpose of recovering the operating costs of a receiving site. The fee charged shall be reduced by an amount received by the receiving site pursuant to a state appropriation for such costs, or federal assistance received for such costs. Fees established under this subsection shall be paid by the originating site directly to the receiving site. For purposes of this section, "operating costs"

include the costs associated with the management or coordination, operations, utilities, classroom, equipment, maintenance, and other costs directly related to providing the receiving site.

13. The auditor of state shall, no less than annually, examine the financial condition and transactions of the commission as provided in chapter 11. A copy of the auditor's report concerning such examination shall be provided to the general assembly.

14. Access to the network shall be offered on an equal basis to public and private agencies under subsection 8 if the private agency contributes an amount toward the match requirement comparable to its share of use for the part of the system in which it participates.

15. Access to the network shall be offered to the judicial district departments of correctional services established in section 905.2, provided that such departments contribute an amount consistent with their share of use for the part of the system in which the departments participate, as determined by the commission.

16. Access shall be offered to hospitals licensed pursuant to chapter 135B and physician clinics for diagnostic, clinical, consultative, data, and educational services for the purpose of developing a comprehensive, statewide telemedicine network, to an agency of the federal government, and to a post office defined as a public agency pursuant to section 8D.2, subsection 5. A hospital, physician clinic, an agency of the federal government, or a post office defined as a public agency pursuant to section 8D.2, subsection

5, shall be responsible for all costs associated with becoming a part of the network.

17. Access shall be offered to the judicial department provided that the department contributes an amount consistent with the department's share of use for the part of the network in which the department participates, as determined by the commission.

18. Notwithstanding chapter 476, the provisions of chapter 476 shall not apply to a public utility in furnishing a telecommunications service or facility to the commission for the Iowa communications network or to any authorized user of the Iowa communications network for such authorized user's connection to the network.

95 Acts, ch 20, §1

Appropriations for connection of Part III users; legislative intent regarding plan for additional connections; construction and state ownership of identified sites; metro connections; 95 Acts, ch 217, §1-3

Subsection 12 amended

8D.14 Iowa communications network fund.

There is created in the office of the treasurer of state a fund to be known as the Iowa communications network fund under the control of the Iowa telecommunications and technology commission. There shall be deposited into the Iowa communications network fund proceeds from bonds issued for purposes of projects authorized pursuant to section 8D.13, funds received from leases pursuant to section 8D.11, and other moneys by law credited to or designated by a person for deposit into the fund.

95 Acts, ch 210, §7

Section amended

CHAPTER 9E

NOTARIAL ACTS

9E.10A Notarial acts — validity.

The validity of a notarial act shall not be affected or impaired by the fact that the notarial officer performing the notarial act is an officer, director, or shareholder of a corporation that may have a ben-

eficial interest or other interest in the subject matter of the notarial act.

95 Acts, ch 105, §1

Section applies retroactively to January 1, 1985, to notarial acts performed on or after that date; 95 Acts, ch 105, §2

NEW section

CHAPTER 9H

CORPORATE OR PARTNERSHIP FARMING

9H.5A Reports.

1. An annual report shall be filed by a reporting entity with the secretary of state on or before June 30 of 1989, and thereafter on or before March 31 of each year on forms adopted pursuant to chapter 17A and supplied by the secretary of state.

2. As used in this section, a "reporting entity" means any of the following:

a. A person serving as the president or other officer or authorized representative of a corporation

(other than a family farm corporation) and including an authorized farm corporation, owning or leasing agricultural land or engaged in farming in this state.

b. A person acting as the general partner of a limited partnership, other than a family farm limited partnership, owning or leasing agricultural land or engaged in farming in this state.

c. A person acting in a fiduciary capacity or as a trustee on behalf of a person, including a corporation, limited partnership, or nonresident alien, who holds

in a trust (other than through a family trust) including through an authorized trust, agricultural land in this state.

d. A person who is a member, manager, or authorized representative of a limited liability company, other than a family farm limited liability company, including an authorized limited liability company, owning or leasing agricultural land or engaged in farming in this state.

3. The report shall contain information for the last year regarding the reporting entity's corporation, limited partnership, limited liability company, or trust, and the agricultural land owned, leased, or held. However, this subsection shall not apply to a family farm corporation, a family farm limited partnership, a family farm limited liability company, or a family trust. The report shall contain the following information, if applicable:

a. Whether the reporting entity represents a corporation, trust, limited liability company, or limited partnership. If the reporting entity represents a corporation or limited liability company the report shall specify if the corporation or limited liability company is foreign or domestic, profit or nonprofit, or an authorized farm corporation or authorized limited liability company. If the reporting entity represents a trust the report shall specify if the trust is an authorized trust.

b. The name of the reporting entity and the name and address of the person supervising the daily operations on the agricultural land.

c. The name, address, and citizenship if not from the United States, of each shareholder, limited partner, member, or beneficiary of a corporation, trust, limited liability company, or limited partnership.

d. The total approximate number of acres, and

the approximate number of acres by named county, of agricultural land which is owned, leased, or held by the corporation, trust, limited liability company, or limited partnership.

e. The approximate number of acres of agricultural land which is owned and operated by the corporation, limited liability company, or limited partnership; the approximate number of acres of agricultural land which is leased by the corporation, limited liability company, limited partnership, or trust as a lessee; the approximate number of acres of agricultural land which is leased from the corporation, limited liability company, limited partnership, or trust as a lessor; and the approximate number of acres of agricultural land which is held in fee and operated by a trust.

f. The approximate number of acres of agricultural land which the corporation, limited liability company, trust, or limited partnership used for the production of row crops.

g. The approximate number of livestock, including cattle, sheep, swine, ostriches, rheas, emus, or poultry, owned, contracted for, or kept by the corporation, limited liability company, trust, or limited partnership, and the approximate number of offspring produced from the livestock.

4. A reporting entity shall be excused from filing a report with the secretary of state during any year in which the reporting entity's corporation, limited partnership, trust, or limited liability company owns, leases, and holds less than twenty acres of agricultural land in this state and the gross revenue produced from all farming on the land equals less than ten thousand dollars.

95 Acts, ch 43, §2

Subsection 3, paragraph g amended

CHAPTER 10A

DEPARTMENT OF INSPECTIONS AND APPEALS

10A.104 Powers and duties of the director.

The director or designees of the director shall:

1. Coordinate the internal operations of the department and develop and implement policies and procedures designed to ensure the efficient administration of the department.

2. Appoint the administrators of the divisions within the department and all other personnel deemed necessary for the administration of this chapter, except the state public defender, assistant state public defenders, administrator of the racing and gaming commission, members of the employment appeal board, and administrator of the state citizen foster care review board. All persons appointed and employed in the department are covered by the provisions of chapter 19A, but persons not appointed by the director are exempt from the merit system provisions of chapter 19A.

3. Prepare an annual budget for the department.

4. Develop and recommend legislative proposals deemed necessary for the continued efficiency of department functions, and review legislative proposals generated outside of the department which are related to matters within the department's purview.

5. Adopt rules deemed necessary for the implementation and administration of this chapter in accordance with chapter 17A, including rules governing hearing and appeal proceedings.

6. Issue subpoenas and distress warrants, administer oaths, and take depositions in connection with audits, appeals, investigations, inspections, and hearings conducted by the department. If a person refuses to obey a subpoena or distress warrant issued by the department or otherwise fails to cooperate in proceedings of the department, the director may enlist the assistance of a court of competent jurisdiction in requiring the person's compliance. Failure to obey orders of the court renders the person in contempt of

the court and subject to penalties provided for that offense.

7. Enter into contracts for the receipt and provision of services as deemed necessary. The director and the governor may obtain and accept federal grants and receipts to or for the state to be used for the administration of this chapter.

8. Establish by rule standards and procedures for certifying that targeted small businesses are eligible to participate in the procurement set-aside program established in sections 73.15 through 73.21. The procedure for determination of eligibility shall not include self-certification by a business. Rules and guidelines adopted pursuant to this subsection are subject to review and approval by the director of the department of management. The director shall main-

tain a current directory of targeted small businesses which have been certified pursuant to this subsection.

9. Administer and enforce this chapter, and chapters 99B, 135B, 135C, 137A, 137B, 137C, 137D, and 137E.

10. Enter into and implement agreements or compacts between the state of Iowa and Indian tribes located in the state which are entered into under the authority of the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.). The agreements or compacts shall contain provisions intended to implement the policies and objectives of the Indian Gaming Regulatory Act.

95 Acts, ch 67, §2
Subsection 8 amended

CHAPTER 12

TREASURER OF STATE

12.9 Annual report of filing fees. Repealed by 95 Acts, ch 219, § 46.

12.12 Statement required. Repealed by 95 Acts, ch 219, § 46.

12.13 Payment of claims. Repealed by 95 Acts, ch 219, § 46.

12.21 Accepting credit card payments.

The treasurer of state may enter into an agreement with a financial institution to provide credit card

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

95 Acts, ch 219, §36
Section amended

CHAPTER 12C

DEPOSIT OF PUBLIC FUNDS

12C.7 Interest — where credited.

1. A depository shall not directly or indirectly pay interest to a public officer on a demand deposit of public funds, and a public officer shall not take or receive interest on demand deposits of public funds. This provision does not apply to interest on time certificates of deposit or savings accounts for public funds.

2. Interest or earnings on investments and time deposits made in accordance with the provisions of sections 12.8, 12B.10, 12C.1, and 12C.6 shall be credited to the general fund of the governmental body making the investment or deposit, with the exception of specific funds for which investments are otherwise provided by law, constitutional funds, or when legally diverted to the state sinking fund for public deposits. Funds so excepted shall receive credit for interest or

earnings derived from such investments or time deposits made from such funds.

95 Acts, ch 25, §1
Subsection 2 amended

12C.9 Investment of sinking funds — bond proceeds.

1. The treasurer of state and all other state agencies authorized to invest funds and the treasurer or other designated financial officer of each political subdivision including each school corporation shall invest the proceeds of notes, bonds, refunding bonds, and other evidences of indebtedness, and funds being accumulated for the payment of principal and interest or reserves in investments set out in section 12B.10, subsection 4, paragraphs "a" through "g", section 12B.10, subsection 5, paragraphs "a" through

“g”, an investment contract, or tax-exempt bonds. The investment shall be as defined and permitted by section 148 of the Internal Revenue Code and applicable regulations under that section. An investment contract or tax-exempt bonds shall be rated within the two highest classifications as established by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A.

2. Earnings and interest from investments pursuant to subsection 1 shall be used to pay the prin-

cipal or interest as the principal or interest comes due on the indebtedness or to fund the construction of the project for which the indebtedness was issued, or shall be credited to the capital project fund for which the indebtedness was issued.

95 Acts, ch 25, §2
Section amended

12C.14 School bonds and earnings. Repealed by 95 Acts, ch 25, § 3. See § 12C.9.

CHAPTER 13

ATTORNEY GENERAL

13.2 Duties.

It shall be the duty of the attorney general, except as otherwise provided by law to:

1. Prosecute and defend all causes in the appellate courts in which the state is a party or interested.

2. Prosecute and defend in any other court or tribunal, all actions and proceedings, civil or criminal, in which the state may be a party or interested, when, in the attorney general's judgment, the interest of the state requires such action, or when requested to do so by the governor, executive council, or general assembly.

3. Prosecute and defend all actions and proceedings brought by or against any state officer in the officer's official capacity.

4. Give an opinion in writing, when requested, upon all questions of law submitted by the general assembly or by either house thereof, or by any state officer, elective or appointive. Questions submitted by state officers must be of a public nature and relate to the duties of such officer.

5. Prepare drafts for contracts, forms, and other writings which may be required for the use of the state.

6. Report to the governor, at the time provided by law, the condition of the attorney general's office, opinions rendered, and business transacted of public interest.

7. Supervise county attorneys in all matters pertaining to the duties of their offices, and from time to time to require of them reports as to the condition of public business entrusted to their charge.

8. Promptly account, to the treasurer of state, for all state funds received by the attorney general.

9. Keep in proper books a record of all official opinions, and a register of all actions, prosecuted and defended by the attorney general, and of all proceedings had in relation thereto, which books shall be delivered to the attorney general's successor.

10. Perform all other duties required by law.

11. Inform prosecuting attorneys and assistant prosecuting attorneys to the state of all changes in

law and matters pertaining to their office and establish programs for the continuing education of prosecuting attorneys and assistant prosecuting attorneys. The attorney general may accept funds, grants and gifts from any public or private source which shall be used to defray the expenses incident to implementing duties under this subsection.

12. Establish and administer, in cooperation with the law schools of Drake university and the state university of Iowa, a prosecutor intern program incorporating the essential elements of the pilot program denominated "*law student intern program in prosecutors' office*" funded by the Iowa crime commission and participating counties. The attorney general shall consult with an advisory committee including representatives of each participating law school and the Iowa county attorneys association, inc. concerning development, administration, and critique of this program. The attorney general shall report on the program's operation annually to the general assembly and the supreme court.

13. Develop written procedures and policies to be followed by prosecuting attorneys in the prosecution of domestic abuse cases under chapters 236 and 708.

95 Acts, ch 180, §1
NEW subsection 13

13.13 Farm assistance program coordinator — contract for mediation services.

1. The attorney general or the attorney general's designee shall serve as the farm assistance program coordinator. The coordinator has the powers and duties specified in this subchapter.

2. The farm assistance program coordinator shall contract with a nonprofit organization chartered in this state to provide mediation services as provided in chapters 654A, 654B, and 654C. The contract may be terminated by the coordinator upon written notice and for good cause. The organization awarded the contract is designated as the farm mediation service for the duration of the contract. The organization may, upon approval by the coordinator, provide me-

diation services other than as provided by law. The farm mediation service is not a state agency for the purposes of chapters 19A, 20, and 669.

95 Acts, ch 195, §1
 Subsection 2 amended

13.15 Rules and forms — fees.

The farm mediation service shall recommend rules to the farm assistance program coordinator. The coordinator shall adopt rules pursuant to chapter 17A to set the compensation of mediators and to implement this subchapter and chapters 654A, 654B, and 654C.

The rules shall provide for an hourly mediation fee not to exceed fifty dollars for the borrower and one hundred dollars for the creditor. The hourly mediation fee may be waived for any party demonstrating financial hardship upon application to the farm mediation service.

The compensation of a mediator shall be no more than twenty-five dollars per hour, and all parties shall contribute an equal amount of the cost.

The coordinator shall adopt voluntary mediation application and mediation request forms.

95 Acts, ch 195, §2
 Unnumbered paragraph 1 amended

CHAPTER 13B

PUBLIC DEFENDERS

13B.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *“Appointed attorney”* means an attorney appointed and compensated by the state to represent an indigent defendant.

2. *“Department”* means the department of inspections and appeals.

3. *“Financial statement”* means a full written disclosure of all assets, liabilities, current income, dependents, and other information required to determine if a client qualifies for legal assistance at public expense.

4. *“State public defender”* means the state public defender appointed pursuant to this chapter.

91 Acts, ch 268, §439
 1991 amendment to subsection 1 repealed effective July 1, 1995; language of 1991 Code restored per instructions to Code editor; 91 Acts, ch 268, §439
 Section amended

13B.2A Indigent defense advisory commission established. Repealed effective July 1, 1995, by 91 Acts, ch 268, § 439.

13B.2B Duties and powers of the indigent defense advisory commission. Repealed effective July 1, 1995, by 91 Acts, ch 268, § 439.

13B.4 Duties and powers of state public defender.

1. The state public defender shall coordinate the provision of legal representation of indigents under arrest or charged with a crime, on appeal in criminal cases, and on appeal in proceedings to obtain post-conviction relief when ordered to do so by the district court in which the judgment or order was issued, and may provide for the representation of indigents in proceedings instituted pursuant to chapter 908, and shall not engage in the private practice of law. The state public defender may represent an indigent under arrest or charged with a crime at the discretion

of the state public defender or upon the request of a local public defender.

2. The state public defender may contract with persons admitted to practice law in this state for the provision of legal services to indigents where there is no local public defender office in the area.

91 Acts, ch 268, §439
 1991 amendment striking and rewriting section repealed effective July 1, 1995; language of 1991 Code restored per instructions to Code editor; 91 Acts, ch 268, §439
 See 92 Acts, ch 1242, §18; 93 Acts, ch 175, §15; 94 Acts, ch 1107, §20, and 94 Acts, ch 1187, §17, for amendments to section as rewritten by 91 Acts, ch 268, §411, which are stricken in accordance with instructions to Code editor; 91 Acts, ch 268, §439
 Section amended

13B.8 Office of local public defender.

1. The state public defender may establish or abolish local public defender offices. In determining whether to establish or abolish a local public defender office, the state public defender shall consider the following:

- a. The number of cases or potential cases where a local public defender is or would be involved.
- b. The population of the area served or to be served.
- c. The willingness of the local private bar to participate in cases where a public defender is or would be involved.
- d. Other factors which the state public defender deems to be important.

Before establishing or abolishing a local public defender office, the state public defender shall provide a written report detailing the reasons for the action to be taken to the justice systems appropriations subcommittee, the chairperson, vice chairperson, and ranking member of the senate committee on judiciary, and the chairperson, vice chairperson, and ranking member of the house of representatives committee on judiciary. The report shall contain a statement of the estimated fiscal impact of the action taken. Any action taken in establishing or abolishing a local public defender office shall only take effect upon the approval of the general assembly. If the state public defender proposes to abolish a local

public defender office prior to the beginning of any regular session of the general assembly and the general assembly takes no action regarding that proposal during the first ninety days of the first regular session occurring after the proposal is made, the office shall be abolished.

2. The state public defender may appoint a local public defender and may remove the local public defender for cause. The local public defender must be an attorney admitted to the practice of law before the Iowa supreme court.

3. The compensation of the local public defender and staff of the local public defender offices shall be fixed by the state public defender.

4. The state public defender shall provide suitable office space, furniture, equipment, and supplies for the office of local public defender out of funds appropriated to the department for this purpose.

91 Acts, ch 268, §439; 95 Acts, ch 67, §3
1991 amendment to subsection 1, unnumbered paragraph 2, repealed effective July 1, 1995; language of 1991 Code restored per instructions to Code editor; 91 Acts, ch 268, §412, 439
See Code editor's note
Section amended

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

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

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

b. Represent an indigent party, without fee and upon an order of the court, in child in need of assis-

tance, family in need of assistance, delinquency, and termination of parental rights proceedings pursuant to chapter 232. The local public defender shall counsel and represent an indigent party in all proceedings pursuant to chapter 232 and prosecute before or after judgment any appeals or other remedies which the local public defender considers to be in the interest of justice unless the court appoints other counsel. The state public defender shall be reimbursed by the counties for services rendered by employees of the local public defenders' offices under this subsection, pursuant to section 232.141.

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

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

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

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

91 Acts, ch 268, §439
1991 amendment repealed effective July 1, 1995; language of 1991 Code restored per instructions to Code editor; 91 Acts, ch 268, §439
See 94 Acts, ch 1187, §18, 19, for amendments to section as amended by 91 Acts, ch 268, §413, which are stricken in accordance with instructions to Code editor; 91 Acts, ch 268, §439
Section amended

CHAPTER 15

DEPARTMENT OF ECONOMIC DEVELOPMENT

15.308 Community builder program.

1. A community builder program is established in the Iowa department of economic development. The purpose of the program is to encourage a city, cluster of cities, county, group of counties, unincorporated community or group of unincorporated communities to implement planning efforts for community, business, and economic development.

2. A city, cluster of cities, county, group of counties, unincorporated community or group of unincorporated communities which participate and receive certification under this program may be eligible for additional consideration under the following state financial assistance programs:

a. The community development block grant program.

b. The rural community 2000 program under this chapter.

c. Recycling projects under section 455D.15.

d. Revitalize Iowa's sound economy fund under chapter 315.

e. Programs administered by the Iowa finance authority under chapter 16.

f. Water, conservation, or any resource enhancement and protection program under the control of the department of natural resources.

g. The federal home investment partnerships program of the Cranston-Gonzalez National Affordable Housing Act of 1990, Pub. L. No. 101-625.

h. The new jobs and income program.

3. A department administering a program under subsection 2 shall adopt administrative rules pro-

viding bonus points of not less than five percent and not more than twenty percent of the points available under the program for certified participants under this section.

4. A city, cluster of cities, county, group of counties, unincorporated community or group of unincorporated communities not yet certified under this section but awarded a grant or initiative from the state shall initiate a process to establish a community builder program within six months of the award. The community builder program shall be completed within one year, or prior to the completion of the contract period if the contract is longer than one year. However, the program shall be completed within three years of the receipt of the award. The department administering the state financial assistance program may grant an extension if the contract period is less than three years.

5. A city, cluster of cities, county, group of counties, unincorporated community, or group of unincorporated communities shall submit a community builder program to the regional coordinating council for coordination, review, and comment and to the department for certification.

6. A community builder program shall include, but is not limited to, all of the following information:

a. A plan to improve infrastructure, cultural and fine arts resources, housing, primary health care services, and natural resources, conservation, and recreational facilities. The plan shall include a prioritization of identified needs.

b. A community database including an inventory and assessment of infrastructure, cultural and fine arts resources, housing, primary health care services, and natural resources, conservation and recreational facilities. The database shall also include an assessment of applicants' participation in a county or regional economic development plan.

c. A five-year community economic development strategic plan designed to meet the needs of the community.

d. A list of local community programs to encourage economic development including public and private financial resources, an analysis of current and potential local tax revenues, and tax abatement programs.

e. A county or regional survey of the available employment and labor force.

7. Contingent on the availability of funding for this purpose, the department may enter into a contract with service providers to provide technical assistance to a city, cluster of cities, county, group of counties, or unincorporated community, or group of unincorporated communities participating in a community builder program.

8. The department shall adopt administrative rules pursuant to chapter 17A to administer this part.

95 Acts, ch 67, §4
Subsection 2, paragraph h amended

15.317 Program.

1. The department shall establish a program to effectuate the purposes of this part by providing financial assistance for small business gap financing,

new business opportunities, and new product and entrepreneurial development. These purposes may be accomplished by providing the following types of assistance:

a. A principal buy-down program to reduce the principal of a business loan.

b. An interest buy-down program to reduce the interest of a business loan.

c. Loans or forgivable loans to aid in economic development.

d. Loan guarantees for business loans made by commercial lenders.

e. Equity-like investments.

2. Only a political subdivision of this state may apply to receive funds for any of the purposes specified in subsection 1. The political subdivision shall make application to the department specifying the purpose for which the funds will be used.

3. The department shall not provide more than one million dollars for any project, unless approved by at least two-thirds of the members of the economic development board.

4. Assistance approved by the board shall be utilized by the business within two years of the date of the approval of the assistance. Funds not utilized in accordance with this subsection shall revert to the control of the board. The business may reapply for assistance in that case.

95 Acts, ch 204, §15
NEW subsection 4

15.337 through 15.340 Reserved.

PART 14

Sections 15.341–15.343 and 15.345–15.348
are repealed effective June 30, 1997; 95 Acts, ch 184, §12

15.341 Workforce development fund program.

This part shall be known as the “*Workforce Development Fund*” program.

95 Acts, ch 184, §1
NEW section

15.342 Purpose.

The purpose of this part shall be to provide a mechanism for funding workforce development programs listed in section 15.343, subsection 2, in order to more efficiently meet the needs identified within those individual programs.

95 Acts, ch 184, §2
NEW section

15.343 Workforce development fund.

1. A workforce development fund is created as a revolving fund in the state treasury under the control of the department consisting of any moneys appropriated by the general assembly for that purpose and any other moneys available to and obtained or accepted by the department from the federal government or private sources for placement in the fund. The fund shall also include all of the following:

a. Notwithstanding section 8.33, all unencumbered and unobligated funds from 1994 Iowa Acts, chapter 1201, section 1, subsection 6, except paragraph "d", section 3, subsections 1 and 3, and section 10, remaining on July 1, 1995, and all unencumbered and unobligated funds in the Iowa conservation corps escrow account established in section 15.229 and the job training fund established in section 260F.6.

b. The loan loss reserve account created in sections 15.345 and 15.346.

c. Repayment moneys pursuant to section 422.16A, up to a maximum of two million dollars each year.

Notwithstanding section 8.33, moneys in the workforce development fund at the end of each fiscal year shall not revert to any other fund but shall remain in the workforce development fund for expenditure for subsequent fiscal years.

2. The assets of the fund shall be used by the department for the following programs and purposes:

a. The Iowa conservation corps created in sections 15.224 through 15.230.

b. Apprenticeship programs under section 260C.44.

c. The job training programs created in chapter 260F.

d. The loan loss reserve program.

e. For the workforce investment program under section 15.348.

3. The director shall submit annually at a regular or special meeting preceding the beginning of the fiscal year, for approval by the economic development board, the proposed allocation of funds from the workforce development fund to be made for that fiscal year for the programs and purposes contained in subsection 2. The director shall also submit a copy of the proposed allocation to the chairpersons of the joint economic development appropriations subcommittee of the general assembly. Subject to approval under section 8.39 for transfer of allocations between programs contained in subsection 2, the plan may provide for increased or decreased allocations if the demand for a program indicates that the need is greater or lesser than the allocation for that program. The director shall report on a quarterly basis to the board on the status of the funds and may present proposed revisions for approval by the board in January and April of each year. The director shall also provide quarterly reports to the legislative fiscal bureau on the status of the funds. Unobligated and unencumbered moneys remaining in the workforce development fund or any of its accounts on June 30 of each year shall be considered part of the fund for purposes of the next year's allocation.

95 Acts, ch 184, §3
NEW section

15.344 Reserved.

15.345 Loan loss reserve account established.

A loan loss reserve account is created within the workforce development fund to be used by the department to encourage small and medium-sized

businesses to invest in training for their existing employees.

95 Acts, ch 184, §4
NEW section

15.346 Purpose — authorized loans.

1. Funds in the loan loss reserve account shall be used to guarantee the payment of the principal, interest, and other amounts outstanding under each loan for which a guarantee was given under this section if the loan is made by an approved financial institution to an employer that is or will be located wholly or partially within the state. The account funds shall be used to pay the principal, interest, and other amounts outstanding if the loan delinquency extends for the number of days specified in the applicable guarantee agreement between the department and any third party with which the department may enter into a contract pursuant to this section, or if any other loan default remains uncured.

2. Loans for which a guarantee is given under this section may be used for any of the following educational or job training purposes:

a. Training program administration and development expenses.

b. Training course material development, acquisition, and installation costs.

c. All wages, salaries, benefits, and other expenses of trainer-employees, and the wages, salaries, benefits, travel, and lodging expenses of other employees while receiving or performing training.

d. Tuition, fees, and expenses relating to seminars, conferences, and other outside training events.

e. Third-party training provider salaries, fees, or contract amounts.

f. Tuition and fees paid to postsecondary institutions or trade or technical schools.

g. Books, videos, and other training materials.

h. Training-related equipment rental or acquisition.

i. Training-related facilities' rental, remodeling, or renovation.

j. The cost of registered apprenticeship programs and other education-related or job training expenses.

3. The department may enter into contracts with employers, financial or other entities, and other state agencies or instrumentalities as it determines are appropriate to carry out the purpose of the account. The department shall coordinate this program with the Iowa college student aid commission and the Iowa finance authority.

95 Acts, ch 184, §5
NEW section

15.347 Workforce investment program established.

A workforce investment program is established to enable more Iowans to enter or reenter the workforce.

95 Acts, ch 184, §6
NEW section

15.348 Purpose.

1. The workforce investment program shall provide training and support services to population

groups that have historically faced barriers to employment and which have been difficult to serve in traditional training programs due to such factors as eligibility guidelines, gaps in services available, or other constraints.

2. Program funds shall be used to contract with local entities through a competitive procurement process that emphasizes strong collaboration between existing local programs and organizations.

3. Priority shall be given to training programs that will target displaced homemakers and welfare recipients in order to enable them to achieve self-sufficiency.

4. The department shall administer the workforce investment program and shall adopt rules governing its operation and eligibility guidelines for participation.

95 Acts, ch 184, §7
NEW section

CHAPTER 15A

USE OF PUBLIC FUNDS TO AID ECONOMIC DEVELOPMENT

15A.9 Quality jobs enterprise zone — state assistance.

1. Findings — zone designation.

a. The general assembly finds and declares that the designation of a quality jobs enterprise zone or zones and the provision of economic development assistance within the zone or zones are necessary to diversify the Iowa economy, enhance opportunities for Iowans to obtain quality industrial jobs, and provide significant economic benefits to the state through the expansion of Iowa's economy. Establishment of the quality jobs enterprise zone or zones and the economic development assistance provided by the state or a local community will be for the well-being and benefit of the residents of the state and will be for a public purpose.

b. In order to assist a community or communities located within the state to secure new industrial manufacturing jobs, the state of Iowa makes economic development assistance available within the zone or zones, and the department of economic development shall designate a site or sites, which shall not be larger than two thousand five hundred acres, within thirty days of March 4, 1994, as a quality jobs enterprise zone or zones for the purpose of attracting a primary business and supporting businesses to locate facilities within the state.

The primary business or a supporting business shall not be prohibited from participating in or receiving other economic development programs or services or electing to utilize other tax provisions to the extent authorized elsewhere by law.

2. Definitions. As used in this section:

a. "Contractor or subcontractor" means a person who contracts with the primary business or a supporting business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility, located within the zone, of the primary business or a supporting business.

b. "Primary business" means a business which pays its full-time production employees at the facility average cash compensation, which shall not include

the cost of the business' contribution to retirement or health benefit plans, equating to fifteen dollars per hour worked by the end of the second full year of operation following project completion, and which provides the department of economic development within thirty days of March 4, 1994, with notice of its intent to develop and operate a new manufacturing facility on a specific location within the state, including the legal description of the site which shall not contain more than two thousand five hundred acres, to invest at least two hundred fifty million dollars in the facility, and to commence construction of the facility by December 31, 1994, providing all necessary permits have been issued and zoning changes made in time for construction to begin by that date. The business shall also guarantee that it will create at least three hundred full-time jobs at the facility. The headquarters of the primary business need not be within the zone.

c. "Project completion" means the first date upon which the average annualized production of finished product for the preceding ninety-day period at the manufacturing facility operated by the primary business within the zone is at least fifty percent of the initial design capacity of the facility. The primary business shall inform the department of revenue and finance in writing within two weeks of project completion.

d. "Supporting business" means a business under contract with the primary business to provide property, materials, or services which are a necessary component of the operation of the manufacturing facility. To qualify as a supporting business, the business shall have a permanent facility or operations located within the zone and the revenue from fulfilling the contract with the primary business shall constitute at least seventy-five percent of the revenue generated by the business from all activities undertaken from the facility within the zone.

e. "Zone or zones" means a quality jobs enterprise zone or zones.

3. *New jobs credit.* At the request of the primary business or a supporting business, an agreement

authorizing a supplemental new jobs credit from withholding from jobs within the zone may be entered into between the department of revenue and finance, a community college, and the primary business or a supporting business. The agreement shall be for program services for an additional job training project, as defined in chapter 260E. The agreement shall provide for the following:

a. That the project shall be administered in the same manner as a project under chapter 260E and that a supplemental new jobs credit from withholding in an amount equal to one and one-half percent of the gross wages paid by the primary business or a supporting business pursuant to section 422.16 is authorized to fund the program services for the additional project.

b. That the supplemental new jobs credit from withholding shall be collected, accounted for, and may be pledged by the community college in the same manner as described in section 260E.5.

c. That the community college shall not be allowed any expenses for administering the additional project except those expenses which are directly attributable to the additional project and which are in excess of the expenses allowed for the project under chapter 260E.

To provide funds for the payment of the costs of the additional project, a community college may borrow money, issue and sell certificates, and secure the payment of the certificates in the same manner as described in section 260E.6, including, but not limited to, providing the assessment of an annual levy as described in section 260E.6, subsection 4. The program and credit authorized by this subsection is in addition to, and not in lieu of, the program and credit authorized in chapter 260E.

4. *Investment tax credit.* The primary business and a supporting business shall be entitled to a corporate tax credit equal to ten percent of the new investment made within the zone by the primary business or a supporting business prior to project completion. A credit in excess of the tax liability for the tax year may be credited to the tax liability for the following twenty years or until depleted, whichever comes first.

For purposes of this section, "*new investment made within the zone*" means the capitalized cost of all real and personal property, including buildings and other improvements to real estate, purchased or otherwise acquired or relocated to the zone for use in the operation of the primary business or a supporting business within the zone. New investment in the zone does not include land, intangible property, or furniture and furnishings. The capitalized cost of property shall for the purposes of this section be determined in accordance with generally accepted accounting principles.

5. *Property tax exemption.*

a. All property, as defined in section 427A.1, subsection 1, paragraphs "e" and "j", Code 1993, used by the primary business or a supporting business and located within the zone, shall be exempt from prop-

erty taxation for a period of twenty years beginning with the year it is first assessed for taxation. In order to be eligible for this exemption, the property shall be acquired or leased by the primary business or a supporting business or relocated by the primary business or a supporting business to the zone from outside the state prior to project completion.

b. Property which is exempt for property tax purposes under this subsection is eligible for the sales and use tax exemption under section 422.45, subsection 27, notwithstanding that subsection or any other provision of the Code to the contrary.

6. *Sales, services, and use tax refund.* Taxes paid pursuant to chapter 422 or 423 on the gross receipts or rental price of property purchased or rented by the primary business or a supporting business for use by the primary business or a supporting business within the zone or on gas, electricity, water, and sewer utility services prior to project completion shall be refunded to the primary business or supporting business if the item was purchased or the service was performed or received prior to project completion. Claims under this section shall be submitted on forms provided by the department of revenue and finance not later than six months after project completion. The refund in this subsection shall not apply to furniture or furnishings, or intangible property.

7. *Sales, services, and use tax refund — contractor or subcontractor.* The primary business or a supporting business shall be entitled to a refund of the taxes paid under chapters 422 and 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the zone of the primary business or a supporting business. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.

To receive the refund a claim shall be filed by the primary business or a supporting business with the department of revenue and finance as follows:

a. The contractor or subcontractor shall state under oath, on forms provided by the department, the amount of the sales of goods, wares, or merchandise or services rendered, furnished, or performed including water, sewer, gas, and electric utility services for use in the zone upon which sales or use tax has been paid prior to the project completion, and shall file the forms with the primary business or supporting business before final settlement is made.

b. The primary business or a supporting business shall, not more than six months after project completion, make application to the department for any refund of the amount of the taxes paid pursuant to chapter 422 or 423 upon any goods, wares, or merchandise, or services rendered, furnished, or performed, including water, sewer, gas, and electric utility services. The application shall be made in the manner and upon forms to be provided by the department, and the department shall audit the claim

and, if approved, issue a warrant to the primary business or supporting business in the amount of the sales or use tax which has been paid to the state of Iowa under a contract. A claim filed by the primary business or a supporting business in accordance with this subsection shall not be denied by reason of a limitation provision set forth in chapter 421, 422, or 423.

c. A contractor or subcontractor who willfully makes a false report of tax paid under the provisions of this subsection is guilty of a simple misdemeanor and in addition is liable for the payment of the tax and any applicable penalty and interest.

8. *Corporate tax research credit.* A corporate tax credit shall be available to the primary business or a supporting business for increasing research activities in this state within the zone. The credit equals thirteen percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state within the zone to total qualified research expenditures. Any credit in excess of the tax liability for the tax year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, the primary business or a supporting business may elect to have the overpayment shown on its final return credited to its tax liability for the following tax year.

For the purposes of this section, "*qualifying expenditures for increasing research activities*" means the qualifying expenditures as defined for the federal credit for increasing research activities which would be allowable under section 41 of the Internal Revenue Code in effect on January 1, 1995. The credit authorized in this subsection is in lieu of the credit authorized in section 422.33, subsection 5.

9. *Exemption from land ownership restrictions for nonresident aliens.*

a. The primary business and a supporting business, to the extent the primary business or the supporting business is not actively engaged in farming within the zone, may acquire, own, and lease land in the zone, notwithstanding the provisions of sections 9H.4, 9H.5, and 567.3, and shall be exempt from the requirements of section 567.4. The primary business and supporting business shall comply with the re-

maining provisions of chapters 9H and 567 to the extent they do not conflict with this subsection.

b. "*Actively engaged in farming*" means any of the following:

(1) Inspecting agricultural production activities within the zone periodically and furnishing at least half of the value of the tools and paying at least half the direct cost of production.

(2) Regularly and frequently making or taking an important part in making management decisions substantially contributing to or affecting the success of the farm operations within the zone.

(3) Performing physical work which significantly contributes to crop or livestock production.

10. *Limitation on assistance.* Economic development assistance under subsections 3 through 9 shall only be available to the primary business or a supporting business. However, if the department finds that a primary business or a supporting business has a record of violations of the law, including but not limited to environmental and worker safety statutes, rules, and regulations, over a period of time that tends to show a consistent pattern, the primary business or supporting business shall not qualify for economic development assistance under subsections 3 through 9, unless the department finds that the violations did not seriously affect public health or safety or the environment, or if it did that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether a primary business or a supporting business is eligible for economic development assistance under subsections 3 through 9, the department shall be exempt from chapter 17A.

11. *Economic cost benefit analysis.* An economic cost benefit analysis shall be conducted by the legislative fiscal bureau for each zone established under this section for every five-year period through the duration of the zone. The analysis shall measure the impact upon both revenues and costs of the state and affected governmental subdivisions due to economic activities within the zone. The legislative fiscal bureau may contract for any services deemed necessary by the director to complete the analysis.

95 Acts, ch 152, §1

1995 amendment to subsection 8, unnumbered paragraph 2, is retroactive to January 1, 1994, for tax years beginning on or after that date; 95 Acts, ch 152, §7

Subsection 8, unnumbered paragraph 2 amended

CHAPTER 15E

DEVELOPMENT ACTIVITIES

15E.120 Loan repayments.

1. Cities which have received loans under the former Iowa community development loan program, sections 7A.41 through 7A.49, Code 1985, are still obligated to repay borrowed funds to the state and to comply with terms and conditions of existing promissory notes.

2. After July 1, 1986, loan repayments made by recipient cities are payable to the Iowa department of economic development in an amount and at the time required by existing promissory notes.

3. Loan agreements with cities receiving loans under the former Iowa community development loan program for projects which have not been completed

as of July 1, 1986 shall be amended by substituting "Iowa department of economic development" for "office for planning and programming". The Iowa department of economic development shall assume the state's administrative responsibilities for these uncompleted projects.

4. All loan agreements and promissory notes with cities with completed projects shall, on July 1, 1986, be amended by substituting "Iowa department of economic development" for "office for planning and programming".

5. Loan repayments received by the Iowa department of economic development shall be deposited into a special account to be used at its discretion as matching funds to attract financial assistance from and to participate in programs with national rural development and finance corporations or as provided in subsection 6. Funds in this special account shall not revert to the state general fund at the end of any fiscal year. If the programs for which the funds in the special account are to be used are terminated or expire, the funds in the special account and funds that would be repaid, if any, to the special account shall be transferred or repaid to the community eco-

nomical betterment account of the strategic investment fund established in section 15.313.

6. If the Iowa department of economic development determines that sufficient funds exist in the special account provided in subsection 5 for the purposes provided in subsection 5, up to twenty-five percent of the loan repayments for the fiscal year received by the Iowa department of economic development may be deposited in the revolving loan fund to operate the self-employment loan program as both were established in section 15.241 under the department of economic development. Funds in this revolving loan fund shall not revert to the state general fund at the end of any fiscal year. Loan repayments from the self-employment loan program shall be deposited in the revolving loan fund. Deposits of funds under this subsection may occur for the fiscal years beginning July 1, 1986, July 1, 1987, July 1, 1988, and July 1, 1989.

7. Loan repayments made under this section and unallocated in the special account in subsection 5, shall be allocated to the revolving account of the rural community 2000 program created in section 15.287.

95 Acts, ch 67, §5
Subsection 5 amended

CHAPTER 16

IOWA FINANCE AUTHORITY

16.177 Prison infrastructure revenue bonds.

1. The authority is authorized to issue its bonds to provide prison infrastructure financing as provided in this section. The bonds may only be issued to finance projects which have been approved for financing by the general assembly. Bonds may be issued in order to fund the construction and equipping of a project or projects, the payment of interest on the bonds, the establishment of reserves to secure the bonds, the costs of issuance of the bonds and other expenditures incident to or necessary or convenient to carry out the bond issue. The bonds are investment securities and negotiable instruments within the meaning of and for the purposes of the uniform commercial code.

2. The department of corrections is authorized to pledge amounts in the Iowa prison infrastructure fund established under section 602.8108A as security for the payment of the principal of, premium, if any, and interest on the bonds. Bonds issued under this section are payable solely and only out of the moneys, assets, or revenues of the fund, all of which may be deposited with trustees or depositories in accordance with bond or security documents, and are not an indebtedness of this state or the authority, or a charge against the general credit or general fund of the state or the authority, and the state shall not be liable for the bonds except from amounts on deposit in the fund. Bonds issued under this section shall contain a statement that the bonds do not constitute an indebtedness of the state or the authority.

3. The proceeds of bonds issued by the authority and not required for immediate disbursement may be deposited with a trustee or depository as provided in the bond documents and invested in any investment approved by the authority and specified in the trust indenture, resolution, or other instrument pursuant to which the bonds are issued without regard to any limitation otherwise provided by law.

4. The bonds shall be:

a. In a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, and be subject to such other terms and conditions as prescribed in the trust indenture, resolution, or other instrument authorizing their issuance.

b. Negotiable instruments under the laws of the state and may be sold at prices, at public or private sale, and in a manner, as prescribed by the authority. Chapters 73A, 74, 74A, and 75 do not apply to the sale or issuance of the bonds.

c. Subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter and as determined by the trust indenture, resolution, or other instrument authorizing their issuance.

5. The bonds are securities in which public officers and bodies of this state, political subdivisions of this state, insurance companies and associations and other persons carrying on an insurance business,

banks, trust companies, savings associations, savings and loan associations, and investment companies, administrators, guardians, executors, trustees, and other fiduciaries, and other persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

6. Bonds must be authorized by a trust indenture, resolution, or other instrument of the authority. However, a trust indenture, resolution, or other instrument authorizing the issuance of bonds may delegate to an officer of the issuer the power to negotiate and fix the details of an issue of bonds.

7. Neither the resolution or trust agreement, nor any other instrument by which a pledge is created is

required to be recorded or filed under the uniform commercial code to be valid, binding, or effective.

8. Bonds issued under this section are declared to be issued for an essential public and governmental purpose and all bonds issued under this section shall be exempt from taxation by the state of Iowa and the interest on the bonds shall be exempt from the state income tax and the state inheritance and estate tax.

9. The authority shall cooperate with the department of corrections in the implementation of this section.

95 Acts, ch 202, §11
 Authorization of additional medium security facility for men; financing costs; 95 Acts, ch 202, §9, 15
 Subsection 10 stricken

CHAPTER 17A

IOWA ADMINISTRATIVE PROCEDURE ACT

17A.6 Publications.

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

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

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

c. Resolutions nullifying administrative rules passed by the general assembly pursuant to Article III, section 40 of the Constitution of the State of Iowa.

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

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

3. The administrative code editor may omit or cause to be omitted from the Iowa administrative code or bulletin any rule the publication of which would be unduly cumbersome, expensive or otherwise inexpedient, if the rule in printed or processed

form is made available on application to the adopting agency at no more than its cost of reproduction, and if the Iowa administrative code or bulletin contains a notice stating the specific subject matter of the omitted rule and stating how a copy of the omitted rule may be obtained.

The administrative code editor shall omit or cause to be omitted from the Iowa administrative code any rule or portion of a rule nullified by the general assembly pursuant to Article III, section 40 of the Constitution of the State of Iowa.

4. An agency which adopts standards by reference to another publication shall purchase and provide a copy of the publication containing the standards to the administrative rules coordinator who shall deposit the copy in the state law library where it shall be made available for inspection and reference.

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

6. All expenses incurred by the administrative code editor under this section shall be defrayed under section 2B.22.

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

8. The Iowa administrative code shall be cited as (agency identification number) IAC, (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

9. The Iowa administrative bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

95 Acts, ch 14, §1

NEW subsection 4 and former subsections 4-8 renumbered as 5-9

17A.8 Administrative rules review committee.

1. There is created the "Administrative Rules Review Committee." The committee shall be bipartisan and shall be composed of the following members:

a. Five senators appointed by the majority leader of the senate.

b. Five representatives appointed by the speaker of the house.

2. A committee member shall be appointed prior to the adjournment of a regular session convened in an odd-numbered year. The term of office shall be for four years beginning May 1 of the year of appointment. However, a member shall serve until a successor is appointed. A vacancy on the committee shall be filled by the original appointing authority for the remainder of the term. A vacancy shall exist whenever a committee member ceases to be a member of the houses from which the member was appointed.

3. A committee member shall be paid the per diem specified in section 2.10, subsection 6, for each day in attendance and shall be reimbursed for actual and necessary expenses. There is appropriated from money in the general fund not otherwise appropriated an amount sufficient to pay costs incurred under this section.

4. The committee shall choose a chairperson from its membership and prescribe its rules of procedure. The committee may employ a secretary or may appoint the administrative code editor or a designee to act as secretary.

5. A regular committee meeting shall be held at the seat of government on the second Tuesday of each month. Unless impracticable in advance of each such meeting the subject matter to be considered shall be published in the Iowa administrative bulletin. A special committee meeting may be called by the chairperson at any place in the state and at any time. Unless impracticable, in advance of each special meeting notice of the time and place of such meeting and the subject matter to be considered shall be published in the Iowa administrative bulletin.

6. The committee shall meet for the purpose of selectively reviewing rules, whether proposed or in effect. A regular or special committee meeting shall be open to the public and an interested person may be heard and present evidence. The committee may require a representative of an agency whose rule or proposed rule is under consideration to attend a committee meeting.

7. The committee may refer a rule to the speaker of the house and the president of the senate at the next regular session of the general assembly. The speaker and the president shall refer such a rule to the appropriate standing committee of the general assembly.

8. If the committee finds objection to a rule, it may utilize the procedure provided in section 17A.4, subsection 4. In addition or in the alternative, the committee may include in the referral, under subsection 7, a recommendation that this rule be overcome by statute. If the committee of the general assembly to which a rule is referred finds objection to the referred rule, it may recommend to the general assembly that this rule be overcome by statute. This section shall not be construed to prevent a committee of the general assembly from reviewing a rule on its own motion.

9. Upon a vote of two-thirds of its members, the administrative rules review committee may delay the effective date of a rule until the adjournment of the next regular session of the general assembly. The committee shall refer a rule whose effective date has been delayed to the speaker of the house of representatives and the president of the senate who shall refer the rule to the appropriate standing committees of the general assembly. If the general assembly has not disapproved of the rule by a joint resolution, the rule shall become effective. The speaker of the house of representatives and the president of the senate shall notify the administrative code editor of the final disposition of each rule delayed pursuant to this subsection. If a rule is disapproved, it shall not become effective and the agency shall rescind the rule. This section shall not apply to rules made effective under section 17A.5, subsection 2, paragraph "b".

10. Notwithstanding section 13.7, the committee may employ necessary legal and technical staff.

95 Acts, ch 49, §1

Subsection 9 amended

CHAPTER 18

DEPARTMENT OF GENERAL SERVICES

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

In addition to other duties the director shall:

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

2. Have at all times, charge of and supervision over the janitors, and other employees of the department in and about the capitol and other state buildings, except the buildings and grounds referred to in section 216B.3, subsection 6, at the seat of government.

3. Institute, in the name of the state, and with the advice and consent of the attorney general, civil and criminal proceedings against any person for injury or threatened injury to any public property under the person's control.

4. Keep in the director's office a complete record containing an itemized account of all state property, including furniture and equipment, under the director's care and control, and plans and surveys of the public grounds, buildings, and underground constructions at the seat of government.

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

6. At the time provided by law, make a verified report which shall cover all transactions for the preceding annual, fiscal or calendar period and show in detail:

a. All expenditures made on account of the department for public buildings and property.

b. The condition of all real and personal property of the state under the director's care and control, together with a report of any loss or destruction, or injury to any such property, with the causes thereof.

c. The measures necessary for the care and preservation of the property under the director's control.

d. Any recommendations as to methods which would tend to render the public service more efficient and economical.

e. Any other matter ordered by the governor.

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

8. Dispose of all personal property of the state under the director's control when it becomes unnecessary or unfit for further use by the state. If the director concludes that the property has little value, the director may dispose of the personal property by means other than by sale. Proceeds from the sale of personal property shall be deposited in the state general fund.

9. Lease all buildings and office space necessary to carry out the provisions of this chapter or necessary for the proper functioning of any state agency at the seat of government, with the approval of the executive council if no specific appropriation has been made. The cost of any lease for which no specific appropriation has been made shall be paid from the fund provided in section 7D.29.

When the general assembly is not in session, the director of general services may request funds from the executive council for moving state agencies lo-

cated at the seat of government from one location to another. The request may include moving costs, telephone costs, repair costs, or any other costs relating to the move. The executive council may approve and shall pay the costs from funds provided in section 7D.29 if it determines the agency or department has no available funds for these expenses.

10. On behalf of the department, enter into lease-purchase contracts for real or personal property, wherever located within the state, to be used for buildings, facilities, and structures, or for additions or improvements to existing buildings, facilities, and structures, to carry out the provisions of this section or for the proper use and benefit of the state and its state agencies on the following terms and conditions:

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

b. The lease-purchase contract may provide for ultimate ownership of the property by the state. Title to all property acquired in this manner shall be taken and held in the name of the state. The state shall be the lessee or contracting party under all lease-purchase contracts entered into pursuant to this section. The lease-purchase contract may contain provisions similar to provisions customarily found in lease-purchase contracts between private persons, including, but not limited to, provisions prohibiting the acquisition or use by the lessee of competing property or property in substitution for the lease-purchased property, obligating the lessee to pay costs of operation, maintenance, insurance, and taxes relating to the property, and permitting the lessor to retain a security interest in the property lease-purchased, until title passes to the state, which may be assigned or pledged by the lessor. The director may contract for additional security or liquidity for a lease-purchase contract and may enter into agreements for letters of credit, lines of credit, insurance, or other forms of security with respect to rental and other payments due under a lease-purchase contract. Fees for the costs of additional security or liquidity are a cost of entering into the lease-purchase contract and may be paid from funds annually appropriated by the general assembly to the state agency for which the property is being obtained or from other funds legally available. The lease-purchase contract may include the costs of entering into the lease-purchase contract as a cost of the lease-purchased property. The provision of a lease-purchase contract which provides that a portion of the periodic rental payment be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 does not apply to lease-purchase contracts

entered into pursuant to this section. Rental and other costs due under lease-purchase contracts entered into pursuant to this section shall be payable from funds annually appropriated by the general assembly to the state agency for which the property is being obtained or from other funds legally available.

c. A lease-purchase contract to which the state is a party is an obligation of a state for purposes of chapters 502 and 636, and is a lawful investment for banks, trust companies, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees, and other fiduciaries responsible for the investment of funds.

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

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

This subsection provides an alternative and independent method for carrying out projects under this chapter and for entering into lease-purchase contracts in connection with the projects, without reference to any other statute, and is not an amendment of or subject to the provision of any other law. No publication of any notice, whether under section 73A.12 or otherwise, and no other or further proceedings with respect to the lease-purchase contracts referred to in this section are required except as set forth in this section, any provisions of other statutes of the state to the contrary notwithstanding.

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

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

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

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

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

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

15. Prepare annual status reports for all ongoing capital projects of all state agencies, as defined in section 8.3A, and submit the status reports to the legislative capital projects committee.

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

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

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

19. Perform all other duties required by law.

95 Acts, ch 214, §3
Subsection 15 amended

18.18 State purchases — recycled products — soybean-based inks.

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

a. By July 1, 1991, one hundred percent of the purchases of inks which are used for newsprint printing services performed internally or contracted for by the department shall be soybean-based.

b. By July 1, 1993, one hundred percent of the purchases of inks, other than inks which are used for newsprint printing services, and which are used internally or contracted for by the department, shall be soybean-based to the extent formulations for such inks are available.

c. By July 1, 1995, a minimum of ten percent of the purchases of garbage can liners made by the department shall be plastic garbage can liners with recycled content. The percentage shall increase by ten percent annually until fifty percent of the purchases of garbage can liners are plastic garbage can liners with recycled content.

d. The department shall report to the general assembly on February 1 of each year the following:

(1) A listing of plastic products which are regularly purchased by the department and other state agencies for which recycled content product alternatives are available, including the cost of the plastic products purchased and the cost of the recycled content product alternatives.

(2) Information relating to soybean-based inks and plastic garbage can liners with recycled content regularly purchased by the department and other state agencies, including the cost of purchasing soybean-based inks and plastic garbage can liners with recycled content and the percentages of soybean-based inks and plastic garbage can liners with recycled content that have been purchased.

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

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

(1) “*Postconsumer material*” means only those products generated by a business or consumer which have served their intended end uses, and which have been separated or diverted from solid waste for the purposes of collection, recycling, and disposition. Postconsumer material does not include manufacturing wastes.

(2) “*Recycled paper*” means a paper product with not less than fifty percent of its total weight consisting of secondary and postconsumer material. At least ten percent of the total weight of recycled paper shall be postconsumer materials.

(3) “*Secondary material*” means fragments of finished products or finished products of a manufacturing process which has converted a resource into a commodity of real economic value, and includes postconsumer material but does not include excess virgin resources of the manufacturing process.

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

c. The department shall adopt standards for the allowable content of postconsumer and secondary material of recycled paper which shall conform with but may be more stringent than the American society for testing and materials standards.

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

e. If a provision under this subsection results in the limitation of sources for the purchase of printing and writing paper to three or fewer sources, the department may waive the requirement in order to purchase necessary amounts of printing and writing paper.

f. The department of general services, in conjunction with the department of natural resources, shall review the availability of a higher percentage content of postconsumer content printing and writing paper and shall, by rule, adjust the percentage requirement accordingly.

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

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

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

5. Information on recycled content shall be requested on all bids for paper products issued by the state and on other bids for products which could have recycled content such as oil, plastic products, including but not limited to starch-based plastic products, compost materials, aggregate, solvents, soybean-based inks, and rubber products.

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

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

8. The department, by January 1, 1993, shall seek an agreement with the agencies of the states of Minnesota and Wisconsin authorized to purchase general use items for state agencies, to provide for the cooperative purchase of recycled products.

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

95 Acts, ch 62, §1
Section amended

18.21 Certain polystyrene products — recycling — prohibition. Repealed by 95 Acts, ch 44, §5.

18.36 Form of bids.

Bids must be:

1. Secured in writing, by telephone, or by facsimile, as indicated in the specifications, and only on the blanks furnished with the specifications.

2. Signed by the bidder, or if a telephone bid, confirmed in writing by bidder.

3. If submitted in writing, submitted in a sealed envelope which shall be properly endorsed.

4. In the hands of the director by the time fixed in the advertisements for bids.

95 Acts, ch 27, §1
Section amended

18.50 Emergency contracts.

The director may at any time award a special contract or may authorize assistants to award a special contract for any work or material coming within the provisions of chapter 7A and sections 18.26 to 18.103 but not included in contracts already

in existence, or which cannot properly be made the subject of a general contract, if the amount of each contract shall not exceed the amount of five thousand dollars, and if special bids have been duly solicited by the director from persons or firms engaged in the kind of work under consideration who have indicated a desire to bid on the class of work to be done.

95 Acts, ch 27, §2
Section amended

18.62 Paper stock drawn.

All paper, envelopes, and other paper stock to be used in their Des Moines offices shall be drawn by the several state departments and agencies from the department of general services with its approval and charged to the several officials, boards, departments, commissions, or agencies and paid from the printing appropriation of each board, official, department, commission, or agency.

95 Acts, ch 27, §3
Section amended

18.75 Duties.

The superintendent of printing shall:

1. Have an office at the seat of government and devote full time to the duties of the position.

2. Have charge of office equipment and supplies and of the stock, if any, required in connection with printing contracts.

3. Have general supervision of all matters pertaining to the enforcement of contracts for printing.

4. Prepare the specifications and advertisements for printing.

5. Have control and direction of the document department.

6. Have legal custody of all Codes, session laws, books of annotations, tables of corresponding sections, publications, except premium lists published by the Iowa state fair board, containing reprints of statutes or administrative rules, or both, reports of state departments, and reports of the supreme court, and sell, account for, and distribute the same as provided by law.

7. Be responsible on an official bond for the public property coming into the superintendent's possession.

8. By November 1 of each year supply a report which contains the name, gender, county, or city of residence when possible, official title, salary received during the previous fiscal year, base salary as computed on July 1 of the current fiscal year, and traveling and subsistence expense of the personnel of each of the departments, boards, and commissions of the state government except personnel who receive an annual salary of less than one thousand dollars. The number of the personnel and the total amount received by them shall be shown for each department in the report. All employees who have drawn salaries, fees, or expense allowances from more than one department or subdivision shall be listed separately under the proper departmental heading. On the re-

quest of the superintendent, the head of each department, board, or commission shall furnish the data covering that agency. The report shall be distributed upon request without charge to each caucus of the general assembly, the legislative service bureau, the legislative fiscal bureau, the chief clerk of the house of representatives, and the secretary of the senate. Copies of the report shall be made available to other persons in both print or electronic medium upon payment of a fee, which shall not exceed the cost of providing the copy of the report. Sections 22.2 through 22.6 apply to the report. All funds from the sale of the report shall be deposited in the general fund. Requests for publications shall be handled only upon receipt of postage by the superintendent.

9. Perform such other duties as are necessary, or incident to the position, or which may be ordered by the director, or required by law.

95 Acts, ch 27, §4
Subsection 8 amended

18.83 Information as to documents.

The superintendent shall advise the public of the publication of reports and documents and of the nature of the material therein, and give information as to the publications that are available for distribution and how to obtain them.

95 Acts, ch 27, §5
Section amended

18.84 Mailing lists.

The superintendent shall require from officials or heads of departments mailing lists, or addressed labels or envelopes, for use in distribution of reports and documents. The superintendent shall revise such lists, eliminating duplications and adding to the lists libraries, institutions, public officials, and persons having actual use for the material. The superintendent shall arrange the lists so as to reduce to the minimum the postage or other cost for delivery. Requests for publications shall be handled only upon receipt of postage by the superintendent from the requesting agency or department.

95 Acts, ch 27, §6
Section amended

18.85 Copies to departments.

The superintendent shall furnish the various officials and departments with copies of their reports needed for office use or to be distributed to persons requesting the reports. Requests for publications shall be handled only upon receipt of postage by the superintendent.

95 Acts, ch 27, §7
Section amended

18.86 Assembly members.

The official reports, the miscellaneous documents and other publications upon request, and the com-

pleted journals of the general assembly and ten copies of the official register, shall be sent to each member of the general assembly, and, so far as they are available, additional copies upon their request. Requests for publications shall be handled only upon receipt of postage by the superintendent.

95 Acts, ch 27, §8
Section amended

18.88 Newspapers.

The journals of the general assembly and the official register shall be sent to each newspaper of general circulation in Iowa, and editors of newspapers in Iowa shall be entitled to other publications on request when they are available. Requests for publications shall be handled only upon receipt of postage by the superintendent.

95 Acts, ch 27, §9
Section amended

18.92 General distribution.

The superintendent may send additional copies of publications to other state officials, individuals, institutions, libraries, or societies that may request them. Requests for publications shall be handled only upon receipt of postage by the superintendent.

95 Acts, ch 27, §10
Section amended

18.95 Old Codes.

The superintendent of printing may distribute to law enforcement officers and other persons in the superintendent's discretion all Codes and Code Supplements which have been supplanted by a newly issued Code, and all session laws which antedate the publication of the last issued Code by at least four years. However, the superintendent shall maintain in reserve a number of copies of each publication as may be fixed by the director. The reserve, when fixed, shall not be distributed except on the order of the executive council. Requests for publications shall be handled upon receipt of postage by the superintendent. However, county officials requesting publications under this section shall not be required to pay postage.

95 Acts, ch 27, §11
Section amended

18.96 Distribution to colleges.

Upon application, in writing, from the librarian or chief executive officer of any incorporated college in this state, the superintendent of printing shall, upon the approval of the director, forward to the applicant, without charge, bound volumes of the laws enacted. Requests for publications shall be handled only upon receipt of postage by the superintendent.

95 Acts, ch 27, §12
Section amended

CHAPTER 19A

DEPARTMENT OF PERSONNEL

19A.3 Applicability — exceptions.

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

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

2. All judicial officers and court employees.

3. The staff of the governor.

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

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

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

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

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

9. Seasonal employees appointed during a department's designated six-month seasonal employment period during the same annual twelve-month period, as approved by the director.

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

11. Professional employees under the supervision of the attorney general, the state public defender, the auditor of state, the treasurer of state, and the public employment relations board. However, employees of the consumer advocate division of the department of justice, other than the consumer advocate, are subject to the merit system.

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

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

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

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

16. All confidential employees.

17. Other employees specifically exempted by law.

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

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

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

21. Chief deputy industrial commissioners.

22. The appointee serving as the coordinator of the office of renewable fuels and coproducts, as provided in section 159A.3.

23. All employees of the Iowa state fair authority.

24. Up to six nonprofessional employees designated at the discretion of each statewide elected official.

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

95 Acts, ch 13, §1; 95 Acts, ch 162, §1, 2

Subsection 9 amended

NEW subsections 23 and 24

19A.3A Employees of statewide elected officials.

The exempt position classifications of employees of statewide elected officials as of June 30, 1994, shall remain exempt and any employees subsequently hired to fill any exempt position vacancies shall be classified as exempt employees.

95 Acts, ch 162, §3

NEW section

19A.8A Experimental research projects.

The director may conduct experimental or research personnel-related projects of limited duration designed to improve the quality of the employment system. The provisions of section 19A.9 or administrative rules adopted pursuant to that section are waived for the purposes of such projects. Projects

adopted under this authority shall not violate existing collective bargaining agreements. Any projects that relate to issues covered by such agreements or issues that are mandatory subjects of collective bargaining are subject to negotiations as applicable. The director shall notify the chairpersons of the standing committees on appropriations of the senate and the house of representatives and the chairpersons of the appropriate subcommittees of those committees of the proposed projects. The notice from the director shall include the purpose of the project, a description of the project, and how the project will be evaluated. Chairpersons notified shall be given at least two weeks to review and comment on the proposal before the project is implemented. The director shall report the results of the experimental research projects conducted in the preceding fiscal year to the legislative council by September 30 of each year.

95 Acts, ch 162, §4
NEW section

19A.12 Iowa management training system — training revolving fund.

1. The department shall establish and administer an Iowa management training system for the state.

2. A training revolving fund is created in the state treasury. The moneys credited to the fund shall be used for the purpose of paying actual and necessary expenses incurred by the department in administering the training system. All fees, grants, or specific appropriations for this purpose shall be credited to the fund. The fees for the training system courses shall be set by the director to cover the costs of course development, training materials, facilities and equipment, professional instructors, and administration, except for costs associated with the salary of employees of the department. The fees shall be paid to the department by the state agency sending the employees for training and the payment shall be credited to the training revolving fund. Notwithstanding section 8.33, the department shall not revert any unencumbered or unobligated balance in the fund.

95 Acts, ch 162, §5
Subsection 2 amended

19A.15 Records public.

The records of the department, except personal information in an employee's file if the publication of

such information would serve no proper public purpose, shall be public records and shall be open to public inspection, subject to reasonable rules as to the time and manner of inspection which may be prescribed by the director. Personal information includes the home address and home telephone number of an employee. Each employee shall have access to the employee's personal file.

Any applicant for a position subject to the provisions of this chapter shall be permitted to review, in accordance with such rules as the director may prescribe, any test, grade, or evaluation resulting from the application for employment.

95 Acts, ch 162, §6
Unnumbered paragraph 1 amended

19A.32 Workers' compensation claims.

The director shall employ appropriate staff to handle and adjust claims of state employees for workers' compensation benefits pursuant to chapters 85, 85A, 85B, and 86, or with the approval of the executive council contract for the services or purchase workers' compensation insurance coverage for state employees or selected groups of state employees. A state employee workers' compensation fund is established to pay state employee workers' compensation claims and administrative costs. The department shall establish a rating formula and assess premiums to all agencies, departments, and divisions of the state including those which have not received an appropriation for the payment of workers' compensation insurance and which operate from moneys other than from the general fund of the state. The department shall collect the premiums and deposit them into the state employee workers' compensation fund. Notwithstanding section 8.33, moneys deposited in the state employee workers' compensation fund shall not revert to the general fund of the state at the end of any fiscal year, but shall remain in the state employee workers' compensation fund and be continuously available to pay state employee workers' compensation claims. The director of revenue and finance is authorized and directed to draw warrants on this fund for the payment of state employee workers' compensation claims.

95 Acts, ch 162, §7
Section amended

CHAPTER 19B

EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION

19B.5 Annual reports.

1. The head of each state agency other than the state board of regents and its institutions is personally responsible for submitting by July 31 an annual

report of the affirmative action accomplishments of that agency to the department of personnel.

2. The department of personnel shall submit a report on the condition of affirmative action programs

in state agencies covered by subsection 1 by September 30 of each year to the department of management.

3. The state board of regents shall submit an annual report of the affirmative action accomplish-

ments of the board and its institutions by January 31 of each year to the department of management.

95 Acts, ch 162, §8
Subsection 2 amended

CHAPTER 22

EXAMINATION OF PUBLIC RECORDS (OPEN RECORDS)

22.7 Confidential records.

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

1. Personal information in records regarding a student, prospective student, or former student maintained, created, collected or assembled by or for a school corporation or educational institution maintaining such records.

2. Hospital records, medical records, and professional counselor records of the condition, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient. However, confidential communications between a crime victim and the victim's counselor are not subject to disclosure except as provided in section 236A.1. However, the Iowa department of public health shall adopt rules which provide for the sharing of information among agencies concerning the maternal and child health program, while maintaining an individual's confidentiality.

3. Trade secrets which are recognized and protected as such by law.

4. Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body.

5. Peace officers' investigative reports, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual.

6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.

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

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

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

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

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

12. Financial statements submitted to the department of agriculture and land stewardship pursuant to chapter 203 or chapter 203C, by or on behalf of a licensed grain dealer or warehouse operator or by an applicant for a grain dealer license or warehouse license.

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

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

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

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

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

18. Communications not required by law, rule, or procedure that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body

receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. Notwithstanding this provision:

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

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

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

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

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

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

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

sibilities of the federal government or the director of the department of natural resources and the state ecologist pertaining to access, disclosure, and use of the ecologically sensitive site records.

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

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

25. Records of purchases of alcoholic liquor from the alcoholic beverages division of the department of commerce which would reveal purchases made by an individual class "E" liquor control licensee. However, the records may be revealed for law enforcement purposes or for the collection of payments due the division pursuant to section 123.24.

26. Financial information, which if released would give advantage to competitors and serve no public purpose, relating to commercial operations conducted or intended to be conducted by a person submitting records containing the information to the department of agriculture and land stewardship for the purpose of obtaining assistance in business planning.

27. Applications, investigation reports, and case records of persons applying for county general assistance pursuant to section 252.25.

28. Marketing and advertising budget and strategy of a nonprofit corporation which is subject to this chapter. However, this exemption does not apply to salaries or benefits of employees who are employed by the nonprofit corporation to handle the marketing and advertising responsibilities.

29. The information contained in records of the centralized employee registry created in chapter 252G, except to the extent that disclosure is authorized pursuant to chapter 252G.

30. Records and information obtained or held by independent special counsel during the course of an investigation conducted pursuant to section 68B.34. Information that is disclosed to a legislative ethics committee subsequent to a determination of probable cause by independent special counsel and made pursuant to section 68B.31 is not a confidential record unless otherwise provided by law.

31. Information contained in a declaration of paternity completed and filed with the state registrar of vital statistics pursuant to section 144.12A, except to the extent that the information may be provided to persons in accordance with section 144.12A.

32. Memoranda, work products, and case files of a mediator and all other confidential communications in the possession of a mediator, as provided in chapters 86 and 216. Information in these confidential communications is subject to disclosure only as provided in sections 86.44 and 216.15B, notwithstanding any other contrary provision of this chapter.

CHAPTER 25

CLAIMS AGAINST THE STATE AND BY THE STATE

25.2 Examination of report — approval or rejection — payment.

The state appeal board with the recommendation of the special assistant attorney general for claims may approve or reject claims against the state of less than ten years covering the following: outdated warrants; outdated sales and use tax refunds; license refunds; additional agricultural land tax credits; outdated invoices; fuel and gas tax refunds; outdated homestead and veterans' exemptions; outdated funeral service claims; tractor fees; registration permits; outdated bills for merchandise; services furnished to the state; claims by any county or county official relating to the personal property tax credit; and refunds of fees collected by the state. Payments authorized by the state appeal board shall be paid from the appropriation or fund of original certification of the claim. However, if that appropriation or fund has since reverted under section 8.33 then such

payment authorized by the state appeal board shall be out of any money in the state treasury not otherwise appropriated. Notwithstanding the provisions of this section, the director of revenue and finance may reissue outdated warrants. On or before November 1 of each year, the director of revenue and finance shall provide the treasurer of state with a report of all unpaid warrants which have been outdated for two years or more. The treasurer shall include information regarding outdated warrants in the notice published pursuant to section 556.12. The provisions of section 556.11 regarding agreements to pay compensation for recovery or assistance in recovery of unclaimed property are applicable to agreements to pay compensation to recover or assist in the recovery of outdated warrants.

95 Acts, ch 219, §37
Section amended

CHAPTER 28C

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Repealed effective July 1, 1995, by 91 Acts, ch 21, §8

CHAPTER 28E

JOINT EXERCISE OF GOVERNMENTAL POWERS

28E.8 Filing and recording.

Before entry into force, an agreement made pursuant to this chapter shall be filed with the secretary of state and recorded with the county recorder. In counties in which the office of county recorder is abolished, the agreement shall be recorded with the county auditor.

95 Acts, ch 110, §1
Section amended

28E.17 Transit policy — joint agreement — city debt.

1. It is the public policy of this state to encourage the establishment or acquisition of urban mass transit systems and the equipment, maintenance and operation thereof by public agencies in cooperation with, and with the assistance of the urban mass transportation administration of the United States department of transportation, pursuant to the provisions of the Urban Mass Transportation Act of 1964, as amended, Title 49, sections 1601 et seq., United States Code, which requires unification or

official coordination of local mass transportation services on an area-wide basis as a condition of such assistance.

2. An agreement between one or more cities and other public agencies for this purpose may be made and carried out without an election and the agency created thereby may jointly exercise through a board of trustees as provided by the agreement all the rights, powers, privileges and immunities of cities related to the provision of mass transportation services, except the authority to incur bonded indebtedness.

3. A city which is a party to a joint transit agency may issue general corporate purpose bonds for the support of a capital program for the joint agency in the following manner:

a. The council shall give notice and conduct a hearing on the proposal in the manner set forth in section 384.25. However, the notice must be published at least ten days prior to the hearing, and if a petition valid under section 362.4 is filed with the clerk of the city prior to the hearing, asking that the

question of issuing the bonds be submitted to the registered voters of the city, the council shall either by resolution declare the proposal abandoned or shall direct the county commissioner of elections to call a special election to vote upon the question of issuing the bonds. Notice of the election and its conduct shall be in the manner provided in section 384.26.

b. If no petition is filed, or if a petition is filed and the proposition of issuing bonds is approved at the election, the council may proceed with the authorization and issuance of the bonds.

An agreement may provide for full or partial payment from transit revenues to the cities for meeting debt service on such bonds.

This subsection shall be construed as granting additional power without limiting the power already existing in cities, and as providing an alternative independent method for the carrying out of any project for the issuance and sale of bonds for the financing of a city's share of a capital expenditures project of a joint transit agency, and no further proceedings with respect to the authorization of the bonds shall be required.

95 Acts, ch 67, §53
Terminology change applied

28E.22 Referendum for tax.

The board of supervisors, or the city councils of a district composed only of cities, may, and upon receipt of a petition signed by five percent of the registered voters residing in the district shall, submit a proposition to the electorate residing in the district at any general election or at a special election held throughout the district. The proposition shall provide for the establishment of a public safety fund and the levy of a tax on taxable property located in the district at rates not exceeding the rates specified in this section for the purpose of providing additional moneys for the operation of the district.

The ballot for the election shall be prepared in substantially the form for submitting special questions at general elections and the form of the proposition shall be substantially as follows:

Shall an annual levy, the amount of which will not exceed a rate of one dollar and fifty cents per thousand dollars of assessed value of the taxable property in the unified law enforcement district be authorized for providing additional moneys needed for unified law enforcement services in the district?

Yes No

If a majority of the registered voters in each city and the unincorporated area of the county voting on the proposition approve the proposition, the county board of supervisors for unincorporated area and city councils for cities are authorized to levy the tax as provided in section 28E.23.

Such moneys collected pursuant to the tax levy shall be expended only for providing additional moneys needed for unified law enforcement services in the district and shall be in addition to the revenues

raised in the county and cities in the district from their general funds which are based upon an average of revenues raised for law enforcement purposes by the county or city for the three previous years. The amount of revenues raised for law enforcement purposes by the county for the three previous years shall be computed separately for the unincorporated portion of the district and for each city in the district.

95 Acts, ch 67, §53
Terminology change applied

28E.25 Expansion of district.

Cities and unincorporated areas may join an established district upon the affirmative vote of the city council or county board of supervisors, whichever is applicable, and a tax may be levied for providing additional moneys for unified law enforcement services only upon the affirmative vote of registered voters of the city or unincorporated area voting in the manner provided in this division. A city or unincorporated area joining a district shall contract with the district for services until the beginning of a fiscal year when the city or unincorporated area may become a member.

95 Acts, ch 67, §53
Terminology change applied

28E.28A Referendum on tax levy — dissolution of district.

1. After five years from the date that a district is established, the public safety commission, upon receipt of a petition signed by fifteen percent of the registered voters residing in the district, shall submit a proposition to the electorate of the district at the next general election to discontinue the annual levy for unified law enforcement services in the district. If a majority of the registered voters in each city and the unincorporated area of the county, as applicable, approve the proposition, the tax levy shall be discontinued.

2. If the discontinuation of the tax levy necessitates the dissolution of the district, the public safety commission shall dispose of any remaining property, the proceeds of which shall be applied first against any outstanding obligations of the district and any balance shall be remitted to the county and each city in the district in the same proportion that each jurisdiction contributed to the district's budget in its final fiscal year. The board of supervisors, on behalf of the unincorporated area of the county and the city councils of the cities included in the dissolved district shall continue to levy taxes and appropriate funds to the public safety fund as provided in section 28E.24 until all outstanding obligations of the dissolved district are paid.

95 Acts, ch 67, §53
Terminology change applied

28E.39 Referendum for ad valorem tax sharing.

An agreement establishing a community cluster shall require the approval of the registered voters residing within the area of the cluster if the agreement provides for the sharing of revenues from ad

valorem property taxes. The proposition shall be submitted to the electorate by each governmental unit forming the community cluster to the electors residing within the area of the governmental unit at a general election or at a special election. However, if a county has designated only certain townships as being included within the community cluster, the proposition shall be submitted to the electorate of the county residing only in the townships included in the community cluster.

The ballot for the election shall be prepared in substantially the form for submitting special questions at general elections.

If a majority of the registered voters in the area of each governmental unit within the proposed commu-

nity cluster voting on the proposition vote in favor of the proposition then the agreement establishing the community cluster shall take effect and the sharing of revenues from ad valorem property taxes is authorized. If the proposition fails in the area of one or more governmental units within the proposed community cluster voting on the proposition then the governmental units in which the proposition passed may establish the community cluster in those areas in which the proposition passed and the sharing of revenues from ad valorem property taxes is authorized.

95 Acts, ch 67, §53

Terminology change applied

CHAPTER 35A

VETERANS AFFAIRS COMMISSION

35A.2 Commission of veterans affairs.

1. A commission of veterans affairs is created consisting of seven persons who shall be appointed by the governor, subject to confirmation by the senate. Members shall be appointed to staggered terms of four years beginning and ending as provided in section 69.19. The governor shall fill a vacancy for the unexpired portion of the term.

2. Six commissioners shall be honorably discharged members of the armed forces of the United States. The American legion of Iowa, disabled American veterans department of Iowa, veterans of foreign wars department of Iowa, American veterans of World War II, Korea, and Vietnam, the Vietnam veterans of America, and the military order of the purple heart, through their department commanders, shall submit two names respectively from their organizations to the governor. The governor shall appoint from each of the organizations one representative to serve as a member of the commission, unless the appointments would conflict with the bipartisan and gender balance provisions of sections 69.16 and 69.16A. In addition, the governor shall appoint one member of the public, knowledgeable in the general field of veterans affairs, to serve on the commission.

95 Acts, ch 67, §6; 95 Acts, ch 161, §1, 2

Subsections 1 and 2 amended

Subsection 3 stricken

35A.3 Duties of the commission.

The commission shall do all of the following:

1. Organize and annually select a chairperson.
2. Adopt rules pursuant to chapter 17A and establish policy for the management and operation of the commission.

3. Prescribe the duties of an executive director and other employees as the commission shall deem necessary to carry out the duties of the commission.

4. Supervise the commandant's administration of commission policy for the operations and conduct of the Iowa veterans home.

5. Maintain information and data concerning the military service records of Iowa veterans.

6. Assist county veterans affairs commissions established pursuant to chapter 35B. The commission shall provide to county commissions suggested uniform benefits and administrative procedures for carrying out the functions and duties of the county commissions.

7. Permanently maintain the records including certified records of bonus applications for awards paid from the war orphans educational fund under chapter 35.

8. Collect and maintain information concerning veterans affairs.

9. Conduct two service schools each year for the Iowa association of county commissioners and executive directors.

10. Assist the United States veterans administration, the Iowa veterans home, funeral directors, and federally chartered veterans service organizations in providing information concerning veterans service records and veterans affairs data.

11. Maintain alphabetically a permanent registry of the graves of all persons who served in the military or naval forces of the United States in time of war and whose mortal remains rest in Iowa.

12. Provide training to executive directors of county commissions of veteran affairs pursuant to section 35B.6. The commission may adopt rules in

accordance with chapter 17A to provide for training of county veteran affairs executive directors.

13. Conduct an equal number of meetings at Camp Dodge and the Iowa veterans home. The agenda

for each meeting shall include a reasonable time period for public comment.

95 Acts, ch 161, §3
NEW subsection 13

CHAPTER 37

MEMORIAL HALLS AND MONUMENTS

37.2 Petition.

The petition for the erection and equipment of any such hall or monument shall request the submission of the proposition to a vote of the people and shall:

1. When it is proposed to erect the same at the expense of the county, be signed by ten percent of the registered voters thereof as shown by the election register used in the last preceding general election, or by a majority of the members of the Grand Army of the Republic, the Spanish-American War Veterans Association, Veterans of World War I, the American Legion, Disabled American Veterans of the World War, Veterans of Foreign Wars of the United States, Marine Corps League and American Veterans of World War II (AMVETS) of the county.

2. When it is proposed to erect the same at the expense of a city be subject to the provisions of section 362.4.

3. Set forth therein the purpose of the memorial proposed, as outlined in section 37.18.

95 Acts, ch 67, §53
Terminology change applied

37.9 Commissioners appointed — vacancies — request for appropriation.

When the proposition to erect any such building or monument has been carried by a majority vote, the board of supervisors or the city council, as the case may be, shall appoint a commission consisting of five members, in the manner and with the qualifications provided in this chapter, which shall have charge and supervision of the erection of the building or monument, and when erected, the management and control of the building or monument.

In cities having a population of more than one hundred thousand, the city council may establish, by ordinance, the number of commission members at not less than five.

On or before January 15 of each year, a commission which manages and controls a county memorial hospital shall prepare and submit to the county auditor a request for an appropriation for the next fiscal year from the general fund for the operation and maintenance of the county memorial hospital. On or before January 20, the county auditor shall submit the request to the county board of supervisors. The board of supervisors may adjust the commission's request and may make an appropriation for the county memorial hospital as provided in section 331.427, sub-

section 2, paragraph "b". For the purposes of public notice, the commission is a certifying board and is subject to the requirements of sections 24.3 through 24.5, sections 24.9 through 24.12, and section 24.16.

The term of office of each member shall be three years, and any vacancies occurring in the membership shall be filled in the same manner as the original appointment.

Commencing with the commissioners appointed to take office after January 1, 1952, one commissioner shall be appointed for a term of one year, two commissioners shall be appointed for a term of two years, and two commissioners shall be appointed for a term of three years, or in each instance until a successor is appointed and qualified. Thereafter, the successors in each instance shall hold office for a term of three years.

The commissioners having the management and control of a memorial hospital shall, within ten days after their appointment, qualify by taking the usual oath of office, but no bonds shall be required of them except as hereinafter provided. The commissioners shall organize by electing a chairperson, secretary, and treasurer. The secretary and treasurer shall each file with the chairperson of the commission a surety bond in such sum as the commission may require, with sureties approved by the commission, for the use and benefit of the memorial hospital. The reasonable costs of such bonds shall be paid from operating funds of the hospital. The secretary shall immediately report to the county auditor and county treasurer the names of the chairperson, secretary, and treasurer of the commission. The commission shall meet at least once each month. Three members of the commission shall constitute a quorum for the transaction of business. The secretary shall keep a complete record of its proceedings.

Memorial hospital funds shall be received, disbursed, and accounted for in the same manner and by the same procedure as provided by section 347.12.

95 Acts, ch 114, §1
NEW unnumbered paragraph 2

37.15 Ex officio voting member.

If a memorial hall or building is a city hall, coliseum, or auditorium, the mayor of the city may be an ex officio voting member of the commission created in section 37.9.

95 Acts, ch 114, §2
Section amended

CHAPTER 38

PEACE INSTITUTE

Repealed by 95 Acts, ch 204, §19

CHAPTER 39

ELECTIONS, ELECTORS, APPOINTMENTS, TERMS AND OFFICERS

39.22 Township officers.

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

1. *By appointment.* The county board of supervisors may pass a resolution in favor of filling the offices of trustee and clerk within a township by appointment by the board, and may direct the county commissioner of elections to submit the question to the registered voters of the township at the next general election. In a township which does not include a city, the voters of the entire township are eligible to vote on the question. In a township which includes a city, only those voters who reside outside the corporate limits of a city are eligible to vote on the question. The resolution shall apply to all townships which have not approved a proposition to fill township offices by appointment. If the proposition to fill the township offices by appointment is approved by a majority of those voting on the question, the board shall fill the offices by appointment as the terms of office of the incumbent township officers expire.

The election of the trustees and clerk of a township may be restored after approval of the appointment process under this subsection by a resolution of the board of supervisors submitting the question to the registered voters who are eligible to vote for township officers of the township at the next general election. If the proposition to restore the election process is approved by a majority of those voting on the question, the election of the township officers shall commence with the next primary and general elections. A resolution submitting the question of restoring the election of township officers at the next general elec-

tion shall be adopted by the board of supervisors upon petition of at least ten percent of the registered voters of a township. The initial terms of the trustees shall be determined by lot, one for two years, and two for four years. However, if a proposition to change the method of selecting township officers is adopted by the electorate, a resolution to change the method shall not be submitted to the electorate for four years.

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

a. *Township trustees.* Township trustees shall be elected biennially to succeed those whose terms of office expire on the first day of January following the election which is not a Sunday or legal holiday. The term of office of each elected township trustee is four years, except as provided in subsection 1 for initial terms following restoration of the election process.

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

95 Acts, ch 67, §53
Terminology change applied

CHAPTER 43

PARTISAN NOMINATIONS — PRIMARY ELECTION

43.49 Canvass by county board.

On the Monday or Tuesday following the primary election, the board of supervisors shall meet, open and canvass the returns from each voting precinct in the county, and make abstracts thereof, stating in words written at length:

1. The number of ballots cast in the county in each precinct by each political party, separately, for

each office.

2. The name of each person voted for and the number of votes given to each person for each different office.

3. The votes of all write-in candidates who each received less than two percent of the votes cast for an office reported collectively under the heading "scattering".

If the day designated by this section for the canvass is a public holiday, the provisions of section 4.1, subsection 34, shall apply.

95 Acts, ch 189, §1
NEW subsection 3

43.53 Nominees for subdivision office — write-in candidates.

The nominee of each political party for any office to be filled by the voters of any township or other political subdivision within the county shall be the person receiving the highest number of votes cast in the primary election by the voters of that party for the office. That person shall appear as the party's candidate for the office on the general election ballot. A person whose name is not printed on the official primary ballot shall not be declared nominated as a candidate for such office in the general election unless that person receives at least five votes. Nomination of a candidate for the office of county supervisor elected from a district within the county shall be governed by section 43.52 and not by this section.

95 Acts, ch 189, §2
Section amended

43.63 Canvass by state board.

Upon receipt of the abstracts of votes from the counties, the secretary of state shall immediately open the envelopes and canvass the results for all offices. The secretary of state shall invite to attend the canvass one representative from each political party which, at the last preceding general election, cast for its candidate for president of the United States or for governor, as the case may be, at least two percent of the total vote cast for all candidates for that office at that election, as determined by the secretary of state. The secretary of state shall notify the chairperson of each political party of the time of the canvass. However, the presence of a representative from a political party is not necessary for the canvass to proceed.

Not later than the twenty-seventh day after the primary election, the secretary of state shall present to the state board of canvassers abstracts showing the number of ballots cast by each political party for each office and a summary of the results for each office, showing the votes cast in each county. The state board of canvassers shall review the results compiled by the secretary of state and, if the results are accurately tabulated, the state board shall approve the canvass.

95 Acts, ch 189, §3
Section stricken and rewritten

43.88 Certification of nominations.

Nominations made by state, district, and county conventions, shall, under the name, place of residence, and post-office address of the nominee, and the office to which nominated, and the name of the political party making the nomination, be forthwith certified to the proper officer by the chairperson and secretary of the convention, or by the committee, as the case may be, and if such certificate is received in time, the names of such nominees shall be printed on the official ballot the same as if the nomination had been made in the primary election.

Nominations made to fill vacancies at a special election shall be certified to the proper official not less than twenty days prior to the date set for the special election. In the event the special election is to fill a vacancy in the general assembly while it is in session or within forty-five days of the convening of any session, the nomination shall be certified not less than fourteen days before the date of the special election.

Nominations certified to the proper official under this section shall be accompanied by an affidavit executed by the nominee in substantially the form required by section 43.67.

95 Acts, ch 189, §4
Unnumbered paragraph 2 amended

CHAPTER 44

NOMINATIONS BY NONPARTY POLITICAL ORGANIZATIONS

44.4 Nominations and objections — time and place of filing.

Nominations made pursuant to this chapter and chapter 45 which are required to be filed in the office of the state commissioner shall be filed in that office not more than ninety-nine days nor later than five p.m. on the eighty-first day before the date of the general election to be held in November. Nominations made for a special election called pursuant to section 69.14 shall be filed by five p.m. not less than twenty days before the date of an election called upon at least forty days' notice and not less than fourteen days before the date of an election called upon at least eighteen days' notice. Nominations made for a special election called pursuant to section 69.14A shall be

filed by five p.m. not less than twenty days before the date of the election. Nominations made pursuant to this chapter and chapter 45 which are required to be filed in the office of the commissioner shall be filed in that office not more than ninety-two days nor later than five p.m. on the sixty-ninth day before the date of the general election. Nominations made pursuant to this chapter or chapter 45 for city office shall be filed not more than seventy-two days nor later than five p.m. on the forty-seventh day before the city election with the city clerk, who shall process them as provided by law.

Objections to the legal sufficiency of a certificate of nomination or nomination petition or to the eligibility of a candidate may be filed by any person who

would have the right to vote for a candidate for the office in question. The objections must be filed with the officer with whom the certificate or petition is filed and within the following time:

1. Those filed with the state commissioner, not less than seventy-four days before the date of the election.

2. Those filed with the commissioner, not less than sixty-four days before the date of the election.

3. Those filed with the city clerk, at least forty-two days before the municipal election.

4. In the case of nominations to fill vacancies occurring after the time when an original nomination for an office is required to be filed, objections shall be filed within three days after the filing of the certificate.

Objections shall be filed no later than five p.m. on the final date for filing.

95 Acts, ch 189, §5
Unnumbered paragraph 1 amended

CHAPTER 47

ELECTION COMMISSIONERS

47.5 Purchasing by competitive bidding.

1. The commissioner shall take bids for goods and services which are needed in connection with registration of voters or preparation for or administration of elections and which will be performed or provided by persons who are not employees of the commissioner under the following circumstances:

a. In any case where it is proposed to purchase data processing services. The commissioner shall give the registrar written notice in advance on each occasion when it is proposed to have data processing services, necessary in connection with the administration of elections, performed by any person other than the registrar or an employee of the county. Such notice shall be made at least thirty days prior to publication of the specifications.

b. In all other cases, where the cost of the goods or services to be purchased will exceed one thousand dollars.

c. Bids shall not be required for legal services or the printing of ballots.

2. When it is proposed to purchase any goods or services, other than data processing services, in connection with administration of elections, the commissioner shall publish notice to bidders, including specifications regarding the goods or services to be purchased or a description of the nature and object of the services to be retained, in a newspaper of general circulation in the county not less than fifteen days before the final date for submission of bids. The commissioner shall also file a copy of the bid specifications in the office of the state commissioner for a period of not less than twenty days prior to such final date. When competitive bidding procedures are used, the purchase of goods or services shall be made from the lowest responsible bidder which meets the specifications or description of the services needed or the commissioner may reject all bids and readvertise. In determining the lowest responsible bidder, various factors may be considered, including but not limited to the past performance of the bidder relative to quality of product or service, the past experience of the purchaser in relation to the product or service, the relative quality of products or services, the proposed terms of delivery and the best interest of the county.

3. The procedure for purchasing data processing services in connection with administration of elections is the same as prescribed in subsection 2, except that the required copy of the bid specifications shall be filed with the registrar rather than the state commissioner. The specifications for data processing contracts relative to voter registration records shall be specified by the registration commission. The registrar shall, not later than the final date for submission of bids, inform the commissioner in writing whether the department of general services data processing facilities are currently capable of furnishing the services the county proposes to purchase, and if so the cost to the county of so obtaining the services as determined in accordance with the standard charges adopted by the registration commission. The commissioner, with approval of the board of supervisors, may reject all bids and enter into an arrangement with the registrar for the services to be furnished by the state. The commissioner may recommend and the board of supervisors may approve purchasing the needed services from the lowest responsible bidder; however, if the needed services could be obtained through the registrar at a lower cost, the board shall publish notice twice in a newspaper of general circulation in the county of its intent to accept such bid and of the difference in the amount of the bid and the cost of purchasing the needed services from the department of general services data processing facilities through the registrar. Each contract for the furnishing of data processing services necessary in connection with the administration of elections, by any person other than the registrar or an employee of the county, shall be executed with the contractor by the board of supervisors of the county purchasing the services, but only after the contract has been reviewed and approved by the registration commission. The contract shall be of not more than one year's duration. Each county exercising the option to purchase such data processing services from a provider other than the registrar shall provide the registrar, at the county's expense, original and updated voter registration lists in a form and at times prescribed by rules adopted by the registration commission.

4. Any election or registration data or records which may be in the possession of a contractor shall remain the property of the commissioner. Contracts with a private person relating to the maintenance and use of voter registration data, which were properly entered into in compliance with this section and with all other laws relating to bidding on such contracts, shall remain in force only until the most recently negotiated termination date of that contract. A new contract with the same provider may be entered into in accordance with subsection 3.

95 Acts, ch 103, §1, 2
Subsection 1, paragraph b stricken and former paragraphs c and d relettered as b and c
Subsection 1, paragraph c amended

47.6 Election dates — conflicts — public measures.

1. The governing body of any political subdivision which has authorized a special election to which section 39.2 is applicable shall by written notice inform the commissioner who will be responsible for conducting the election of the proposed date of the special election. If a public measure will appear on the ballot at the special election the governing body shall submit the complete text of the public measure to the commissioner with the notice of the proposed date of the special election.

If the proposed date of the special election coincides with the date of a regularly scheduled election, the notice shall be given no later than five p.m. on the last day on which nomination papers may be filed for the regularly scheduled election. Otherwise, the notice shall be given at least thirty-two days in advance of the date of the proposed special election. Upon receiving the notice, the commissioner shall promptly give written approval of the proposed date unless it appears that the special election, if held on that date, would conflict with a regular election or with another special election previously scheduled for that date.

A public measure shall not be withdrawn from the ballot at any election if the public measure was placed on the ballot by a petition, or if the election is a special election called specifically for the purpose of deciding one or more public measures for a single political subdivision. However, a public measure which was submitted to the county commissioner of elections by the governing body of a political subdivision may be withdrawn by the governing body which submitted the public measure if the public measure was to be placed on the ballot of a regularly scheduled election. The notice of withdrawal must be made by resolution of the governing body and must be filed with the commissioner no later than the last day upon which a candidate may withdraw from the ballot.

2. For the purpose of this section, a conflict between two elections exists only when one of the elections would require use of precinct boundaries which differ from those to be used for the other election, or when some but not all of the registered voters of any precinct would be entitled to vote in one of the elections and all of the registered voters of the same precinct would be entitled to vote in the other

election. Nothing in this subsection shall deny a commissioner discretionary authority to approve holding a special election on the same date as another election, even though the two elections may be defined as being in conflict, if the commissioner concludes that to do so will cause no undue difficulties.

95 Acts, ch 67, §53
Terminology change applied

47.8 Voter registration commission — composition — duties.

1. A state voter registration commission is established which shall meet at least quarterly to make and review policy, adopt rules, and establish procedures to be followed by the registrar in discharging the duties of that office, and to promote interagency cooperation and planning. The commission shall consist of the state commissioner of elections or the state commissioner's designee, the state chairpersons of the two political parties whose candidates for president of the United States or governor, as the case may be, received the greatest and next greatest number of votes in the most recent general election, or their respective designees, and a county commissioner of registration appointed by the president of the Iowa state association of county auditors, or an employee of the commissioner. The commission membership shall be balanced by political party affiliation pursuant to section 69.16. Members shall serve without additional salary or reimbursement.

The state commissioner of elections, or the state commissioner's designee, shall serve as chairperson of the state voter registration commission.

2. The registration commission shall prescribe the forms required for voter registration by rules promulgated pursuant to chapter 17A.

3. The registrar shall provide staff services to the commission and shall make available to it all information relative to the activities of the registrar's office in connection with voter registration policy which may be requested by any commission member. The registrar shall also provide to the commission at no charge statistical reports for planning and analyzing voter registration services in the state.

The commission may authorize the registrar to employ such additional staff personnel as it deems necessary to permit the duties of the registrar's office to be adequately and promptly discharged. Such personnel shall be employed pursuant to chapter 19A.

4. The registration commission shall annually adopt a set of standard charges to be made for the services the registrar is required to offer to the several commissioners, and for furnishing of voter registration records which are requested by persons other than the registrar, the state commissioner or any commissioner pursuant to section 48A.38. These charges shall be sufficient to reimburse the state for the actual cost of furnishing such services or information, and shall be specified by unit wherever possible. The standard charges shall be adopted by the commission by January 15 of each calendar year.

95 Acts, ch 189, §6, 7
Subsections 1 and 3 amended

CHAPTER 48A

VOTER REGISTRATION

48A.14 Challenges of voter registrations.

1. The registration of a registered voter may be challenged by another registered voter of the same county subject to the conditions and limitations of this section. A challenge shall be a statement in writing to the commissioner alleging one or more of the following reasons the challenged registrant's registration should not have been accepted or should be canceled:

- a. The challenged registrant is not a citizen of the United States.
- b. The challenged registrant is less than seventeen and one-half years of age.
- c. The challenged registrant is not a resident at the address where the registrant is registered.
- d. The challenged registrant has falsified information on the registrant's registration form.
- e. The challenged registrant has been convicted of a felony, and the registrant's voting rights have not been restored.
- f. The challenged registrant has been adjudged mentally incompetent by a court of law and no subsequent proceeding has reversed that finding.

2. A challenge shall not contain allegations against more than one registered voter.

3. A challenge shall contain a statement signed by the challenger in substantially the following form: "I swear or affirm that information contained on this challenge is true. I understand that knowingly filing a challenge containing false information is an aggravated misdemeanor."

4. A challenge may be filed at any time. A challenge filed less than seventy days before a regularly scheduled election shall not be processed until after the pending election unless the challenge is filed within twenty days of the commissioner's receipt of the challenged registrant's registration form or notice of change to an existing registration.

5. A challenger may withdraw a challenge at any time before the hearing held pursuant to section 48A.16 by notifying the commissioner in writing of the withdrawal.

95 Acts, ch 67, §7
Subsection 3 amended

CHAPTER 49

METHOD OF CONDUCTING ELECTIONS

49.3 Election precincts.

Election precincts shall be drawn by the county board of supervisors or the temporary county redistricting commission in all unincorporated portions of each county, and by the city council of each city in which it is necessary or deemed advisable to establish more than one precinct. Precincts established as provided by this chapter shall be used for all elections, except where temporary merger of established precincts is specifically permitted by law for certain elections, and no political subdivision shall concurrently maintain different sets of precincts for use in different types of elections. Election precincts shall be drawn so that:

1. No precinct shall have a total population in excess of three thousand five hundred, as shown by the most recent federal decennial census.
2. Each precinct is contained wholly within an existing legislative district, except:
 - a. When adherence to this requirement would force creation of a precinct which includes the places of residence of fewer than fifty registered voters.
 - b. When the general assembly by resolution designates a period after the federal decennial census is taken and before the next succeeding reapportionment of legislative districts required by Article III, section 35, Constitution of the state of Iowa as amended

in 1968, during which precincts may be drawn without regard to the boundaries of existing legislative districts.

3. Precincts established after July 1, 1994, shall be composed of contiguous territory within a single county. The boundaries of all precincts shall follow the boundaries of areas for which official population figures are available from the most recent federal decennial census.

4. All election districts, including city wards and county supervisor districts, shall be drawn according to the following standards:

- a. All boundaries, except for supervisor districts for counties using supervisor representation plan "two" pursuant to section 331.209, shall follow precinct boundaries.
- b. All districts shall be as nearly equal as practicable to the ideal population for the districts as determined by dividing the number of districts to be established into the population of the city or county.
- c. All districts shall be composed of contiguous territory as compact as practicable.
- d. Consideration shall not be given to the addresses of incumbent officeholders, political affiliations of registered voters, previous election results, or demographic information other than population head counts, except as required by the Constitution and the laws of the United States.

e. Cities shall not be divided into two or more county supervisor districts unless the population of the city is greater than the ideal size of a district. Cities shall be divided into the smallest number of county supervisor districts possible.

95 Acts, ch 67, §53
Terminology change applied

49.12 Election boards.

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

If double counting boards are not appointed for precincts using paper ballots and using only three precinct election officials, a fourth precinct election official shall be appointed from the election board panel to serve beginning at the time the polls close to assist in counting the paper ballots.

95 Acts, ch 67, §53
Terminology change applied

49.13 Commissioner to appoint members, chairperson.

1. The membership of each precinct election board shall be appointed by the commissioner, not less than fifteen days before each election held in the precinct, from the election board panel drawn up as provided in section 49.15. Precinct election officials shall be registered voters of the county, or other political subdivision within which precincts have been merged across county lines pursuant to section 49.11, subsection 1, in which they are appointed. Preference shall be given to appointment of residents of a precinct to serve as precinct election officials for that precinct, but the commissioner may appoint other residents of the county where necessary.

2. Each election board member shall be a member of one of the two political parties whose candidates for president of the United States or for governor, as the case may be, received the largest and next largest number of votes in the precinct at the last general election, except that persons not members of either of these parties may be appointed to serve for any

election in which no candidates appear on the ballot under the heading of either of these political parties.

3. In appointing the election board to serve for any election in which candidates' names do appear under the heading of these political parties, the commissioner shall give preference to the persons designated by the respective county chairpersons of these political parties for placement on the election board panel, as provided by section 49.15, in the order that they were so designated. However, the commissioner may for good cause decline to appoint a designee of a county chairperson if that chairperson is notified and allowed two working days to designate a replacement.

4. The commissioner shall designate one member of each precinct election board as chairperson of that board, and also of the counting board authorized by chapter 51 if one is appointed, with authority over the mechanics of the work of both boards.

95 Acts, ch 67, §53
Terminology change applied

49.51 Commissioner to control printing.

The commissioner shall have charge of the printing of the ballots to be used for any election held in the county, unless the commissioner delegates that authority as permitted by this section. The commissioner may delegate this authority only to another commissioner who is responsible under section 47.2 for conducting the elections held for a political subdivision which lies in more than one county, and only with respect to printing of ballots containing only public questions or the names of candidates to be voted upon by the registered voters of that political subdivision. Only one facsimile signature, that of the commissioner under whose direction the ballot is printed, shall appear on the ballot. It is the duty of the commissioner to insure that the arrangement of any ballots printed under the commissioner's direction conforms to all applicable requirements of this chapter.

A sample ballot of any election held in the county shall be forwarded as soon as available to the ethics and campaign disclosure board.

95 Acts, ch 67, §53
Terminology change applied

49.66 Reserve supply of ballots.

The commissioner shall provide and retain at the commissioner's office an ample supply of ballots, in addition to those distributed to the several voting precincts. If at any time the ballots furnished to any precinct shall be lost, destroyed, or if the chairperson of the precinct election officials determines that the supply of ballots will be exhausted before the polls are closed, the chairperson of the precinct election officials of the precinct shall immediately contact the commissioner by telephone. If no telephone is available, a messenger shall be sent to the commissioner with a written application for additional ballots. The application shall be signed by a majority of the precinct election officials. The commissioner shall keep written records of all requests for additional ballots and shall immediately cause to be delivered to the

officials, at the polling place, such additional supply of ballots as may be required, and sufficient to comply with the provisions of this chapter.

95 Acts, ch 189, §8
Section amended

49.67 Form of reserve supply.

The number of reserve ballots for each precinct shall be determined by the commissioner.

If necessary, the commissioner or the commissioner's designee may make photocopies of official ballots to replace or replenish ballot supplies. The commissioner shall keep a record of the number of photocopied ballots made for each precinct, the name of the person who made the photocopies, and the date, time, and location at which the photocopies were made. These records shall be made on forms and following procedures prescribed by the secretary of state by administrative rule.

In any precinct where photocopied ballots are used, each photocopied ballot shall be initialed as required

by section 49.82 by two precinct officials immediately before being issued to the voter. In partisan elections the two precinct officials shall be of different political parties.

95 Acts, ch 189, §9
Section stricken and rewritten

49.72 Absentee voters designated before polling place opened.

The commissioner shall deliver to each precinct election board not less than one hour before the time at which the polls are to open for any election the list of all registered voters of that precinct who have been given or sent an absentee ballot for that election, and the election board shall immediately designate those registered voters who are so listed and therefore not entitled to vote in person at the polls, as required by section 53.19.

95 Acts, ch 67, §53
Terminology change applied

CHAPTER 50

CANVASS OF VOTES

50.24 Canvass by board of supervisors.

The county board of supervisors shall meet to canvass the vote on the first Monday or Tuesday after the day of each election to which this chapter is applicable, unless the law authorizing the election specifies another date for the canvass. If that Monday or Tuesday is a public holiday, section 4.1, subsection 34, controls. Upon convening, the board shall open and canvass the tally lists and shall prepare abstracts stating, in words written at length, the number of votes cast in the county, or in that portion of the county in which the election was held, for each office and on each question on the ballot for the election. The board shall contact the chairperson of the special precinct board before adjourning and include in the canvass any absentee ballots which were received after the polls closed in accordance with section 53.17 and which were canvassed by the special precinct board after election day. The abstract shall further indicate the name of each person who received votes for each office on the ballot, and the number of votes each person named received for that office, and the number of votes for and against each question submitted to the voters at the election. The votes of all write-in candidates who each received less than two percent of the votes cast for an office shall be reported collectively under the heading "scattering".

The board shall also prepare a certificate showing the total number of people who cast ballots in the election. For general elections and elections held pursuant to section 69.14, a copy of the certificate shall be forwarded to the state commissioner.

Any obvious clerical errors in the tally lists from the precincts shall be corrected by the supervisors. Complete records of any changes shall be recorded in the minutes of the canvass.

95 Acts, ch 189, §10
Unnumbered paragraph 1 amended

50.36 Envelopes containing other abstracts — canvass.

The secretary of state, upon receipt of the envelopes containing the abstracts of votes, shall open and canvass the abstracts for all offices except governor and lieutenant governor.

The secretary of state shall invite to attend the canvass one representative from each political party which, at the last preceding general election, cast for its candidate for president of the United States or for governor, as the case may be, at least two percent of the total vote cast for all candidates for that office at that election, as determined by the secretary of state. The secretary of state shall notify the chairperson of each political party of the time of the canvass. However, the presence of a representative from a political party is not necessary for the canvass to proceed.

95 Acts, ch 189, §11
Section stricken and rewritten

50.37 State canvassing board.

The executive council shall constitute a board of canvassers of all abstracts of votes required to be filed with the state commissioner, except for the offices of governor and lieutenant governor. Any clerical error

found by the secretary of state or state board of canvassers shall be corrected by the county commissioner in a letter addressed to the state board of canvassers.

95 Acts, ch 189, §12
Section amended

50.38 Time of state canvass.

Not later than twenty-seven days after the day of the election, the secretary of state shall present to the board of state canvassers abstracts of votes cast at the election showing the number of ballots cast for each office and a summary of the results for each office, showing the votes cast in each county. The state board of canvassers shall review the results compiled by the secretary of state and, if the results are accurately tabulated, the state board shall approve the canvass.

95 Acts, ch 189, §13
Section stricken and rewritten

50.49 Recounts for public measures.

A recount for any public measure shall be ordered by the board of canvassers if a petition requesting a recount is filed with the county commissioner not later than three days after the completion of the canvass of votes for the election at which the question appeared on the ballot. The petition shall be signed by the greater of not less than ten eligible electors or a number of eligible electors equaling one percent of the total number of votes cast upon the public measure. Each petitioner must be a person who was entitled to vote on the public measure in question or would have been so entitled if registered to vote.

The recount shall be conducted by a board which shall consist of:

1. A designee named in the petition requesting the recount.
2. A designee named by the commissioner at or before the time the board is required to convene.
3. A person chosen jointly by the members designated under subsections 1 and 2.

The commissioner shall convene the persons designated under subsections 1 and 2 not later than nine a.m. on the seventh day following the canvass of the election in question. If those two members cannot agree on the third member by eight a.m. on the ninth day following the canvass, they shall immediately notify the chief judge of the judicial district in which the canvass is occurring, who shall appoint the third member not later than five p.m. on the eleventh day following the canvass.

The petitioners requesting the recount shall post a bond as required by section 50.48, subsection 2. The amount of the bond shall be one thousand dollars for a public measure appearing on the ballot statewide or one hundred dollars for any other public measure. If the difference between the affirmative and negative votes cast on the public measure is less than the greater of fifty votes or one percent of the total number of votes cast for and against the question, a bond is not required.

The procedure for the recount shall follow the provisions of section 50.48, subsections 4 through 7, as far as possible.

95 Acts, ch 189, §14
NEW section

CHAPTER 53

ABSENT VOTERS

53.2 Application for ballot.

Any registered voter, under the circumstances specified in section 53.1, may on any day, except election day, and not more than seventy days prior to the date of the election, apply in person for an absentee ballot at the commissioner's office or at any location designated by the commissioner, or make written application to the commissioner for an absentee ballot. The state commissioner shall prescribe a form for absentee ballot applications. However, if a registered voter submits an application that includes all of the information required in this section, the prescribed form is not required.

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

Each application shall contain the name and signature of the registered voter, the address at which

the voter is registered to vote, and the name or date of the election for which the absentee ballot is requested, and such other information as may be necessary to determine the correct absentee ballot for the registered voter. If insufficient information has been provided, the commissioner shall, by the best means available, obtain the additional necessary information.

An application for a primary election ballot which specifies a party different from that recorded on the registered voter's voter registration record shall be accepted as a change or declaration of party affiliation. The commissioner shall approve the change or declaration and enter a notation of the change on the registration records. A notice shall be sent with the ballot requested informing the voter that the voter's registration record will be changed to show that the voter is now affiliated with the party whose ballot the voter requested.

If an application for an absentee ballot is received from an eligible elector who is not a registered voter

the commissioner shall send a registration form under section 48A.8 and an absentee ballot to the eligible elector. If the application is received so late that it is unlikely that the registration form can be returned in time to be effective on election day, the commissioner shall enclose with the absentee ballot a notice to that effect, informing the voter of the registration time limits in section 48A.9. The commissioner shall record on the elector's application that the elector is not currently registered to vote. If the registration form is properly returned by the time provided by section 48A.9, the commissioner shall record on the elector's application the date of receipt of the registration form and enter a notation of the registration on the registration records.

A registered voter who has not moved from the county in which the elector is registered to vote may submit a change of name, telephone number, or address on the form prescribed in section 48A.8 when casting an absentee ballot. Upon receipt of a properly completed form, the commissioner shall enter a notation of the change on the registration records.

95 Acts, ch 189, §15
Unnumbered paragraph 4 amended

53.23 Special precinct election board.

1. The election board of the absentee ballot and special voters precinct shall be appointed by the commissioner in the manner prescribed by sections 49.12 and 49.13, except that the number of precinct election officials appointed to the board shall be sufficient to complete the counting of absentee ballots by ten p.m. on election day.

2. The board's powers and duties shall be the same as those provided in chapter 50 for precinct election officials in regular precinct polling places. However, the election board of the special precinct shall receive from the commissioner and count all absentee ballots for all precincts in the county; when two or more political subdivisions in the county hold elections simultaneously the special precinct election board shall count absentee ballots cast in all of the elections so held. The tally list shall be recorded on forms prescribed by the state commissioner.

3. The commissioner shall set the convening time for the board, allowing a reasonable amount of time to complete counting all absentee ballots by ten p.m. on election day. The commissioner may direct the board to meet on the day prior to the election solely for the purpose of reviewing the absentee voters' affidavits appearing on the sealed ballot envelopes if in the commissioner's judgment this procedure is necessary due to the number of absentee ballots received, but under no circumstances shall a sealed ballot envelope be opened before the board convenes on election day.

4. The room where members of the special precinct election board are engaged in counting absentee ballots during the hours the polls are open shall be policed so as to prevent any person other than those whose presence is authorized by this subsection from obtaining information about the progress of the

count. The only persons who may be admitted to that room are the members of the board, one challenger representing each political party, one observer representing any nonparty political organization or any candidate nominated by petition pursuant to chapter 45 or any other nonpartisan candidate in a city or school election appearing on the ballot of the election in progress, one observer representing persons supporting a public measure appearing on the ballot and one observer representing persons opposed to such measure, and the commissioner or the commissioner's designee. It shall be unlawful for any of these persons to communicate or attempt to communicate, directly or indirectly, information regarding the progress of the count at any time before the polls are closed.

5. The special precinct election board shall preserve the secrecy of all absentee and special ballots. After the affidavits on the envelopes have been reviewed and the qualifications of the persons casting the ballots have been determined, those that have been accepted for counting shall be opened. The ballots shall be removed from the affidavit envelopes without being unfolded or examined, and then shall be thoroughly intermingled, after which they shall be unfolded and tabulated. If secrecy folders or envelopes are used with special paper ballots, the ballots shall be removed from the secrecy folders after the ballots have been intermingled.

6. The special precinct election board shall not release the results of its tabulation on election day until all of the ballots it is required to count on that day have been counted, nor release the tabulation of challenged ballots accepted and counted under chapter 50 until that count has been completed.

95 Acts, ch 189, §16
Subsection 4 amended

53.30 Ballot envelope preserved.

The ballot envelope having the registered voter's affidavit thereon shall be preserved.

95 Acts, ch 67, §53
Terminology change applied

53.37 "Armed forces" defined.

This division is intended to implement the federal Uniform and Overseas Citizens Absentee Voting Act, 42 U.S.C. § 1973ff et seq.

The term "*armed forces of the United States*", as used in this division, shall mean the army, navy, marine corps, coast guard, and air force of the United States.

For the purpose of absentee voting only, there shall be included in the term "*armed forces of the United States*" the following:

1. Spouses and dependents of members of the armed forces while in active service.

2. Members of the merchant marine of the United States and their spouses and dependents.

3. Civilian employees of the United States in all categories serving outside the territorial limits of the several states of the United States and the District of Columbia and their spouses and dependents when

residing with or accompanying them, whether or not the employee is subject to the civil service laws and the Classification Act of 1949, and whether or not paid from funds appropriated by the Congress.

4. Members of religious groups or welfare agencies assisting members of the armed forces, who are officially attached to and serving with the armed forces, and their spouses and dependents.

5. Citizens of the United States who do not fall under any of the categories described in subsections 1 to 4, but who are entitled to register and vote pursuant to section 48A.5, subsection 4.

95 Acts, ch 67, §8
Subsection 5 amended

53.39 Request for ballot — when available.

Section 53.2 does not apply in the case of a qualified voter of the state of Iowa serving in the armed forces

of the United States. In any such case an application for ballot as provided for in that section is not required and an absent voter's ballot shall be sent or made available to any such qualified voter upon a request as provided in this division.

All official ballots to be voted by qualified absent voters in the armed forces of the United States at the primary election and the general election shall be printed prior to forty days before the respective elections and shall be available for transmittal to such qualified voters in the armed forces of the United States at least forty days before the respective elections. The provisions of this chapter apply to absent voting by qualified voters in the armed forces of the United States except as modified by the provisions of this division.

95 Acts, ch 67, §9
Section amended

CHAPTER 56

CAMPAIGN FINANCE

56.2 Definitions.

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

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

2. *"Board"* means the Iowa ethics and campaign disclosure board established under section 68B.32.

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

4. *"Candidate"* means any individual who has taken affirmative action to seek nomination or election to a public office and shall also include any judge standing for retention in a judicial election.

5. *"Candidate's committee"* means the committee designated by the candidate for a state, county, city, or school office to receive contributions in excess of five hundred dollars in the aggregate, expend funds in excess of five hundred dollars in the aggregate, or incur indebtedness on behalf of the candidate in excess of five hundred dollars in the aggregate in any calendar year.

6. *"Commissioner"* means the county auditor of each county, who is designated as the county commissioner of elections pursuant to section 47.2.

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

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

9. *"Contribution"* means:

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

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

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

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

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

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

13. *"Fundraising event"* means any campaign function to which admission is charged or at which goods or services are sold.

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

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

16. “*Political committee*” means a committee, but not a candidate’s committee, which accepts contributions in excess of five hundred dollars in the aggregate, makes expenditures in excess of five hundred dollars in the aggregate, or incurs indebtedness in excess of five hundred dollars in the aggregate in any one calendar year for the purpose of supporting or opposing a candidate for public office, or for the purpose of supporting or opposing a ballot issue; “*political committee*” also means an association, lodge, society, cooperative, union, fraternity, sorority, educational institution, civic organization, labor organization, religious organization, or professional organization which accepts contributions in excess of five hundred dollars in the aggregate, makes expenditures in excess of five hundred dollars in the aggregate, or incurs indebtedness in excess of five hundred dollars in the aggregate in any one calendar year for the purpose of supporting or opposing a candidate for public office, or for the purpose of supporting or opposing a ballot issue. “*Political committee*” also includes a committee which accepts contributions in excess of five hundred dollars in the aggregate, makes expenditures in excess of five hundred dollars in the aggregate, or incurs indebtedness in excess of five hundred dollars in the aggregate in a calendar year to cause the publication or broadcasting of material in which the public policy positions or voting record of an identifiable candidate is discussed and in which a reasonable person could find commentary favorable or unfavorable to those public policy positions or voting record.

17. “*Political purpose*” or “*political purposes*” means the support or opposition of a candidate or ballot issue.

18. “*Public office*” means any state, county, city, or school office filled by election.

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

20. “*State statutory political committee*” means a committee as defined in section 43.111.

95 Acts, ch 198, §1, 2

NEW subsection 6 and former subsections 6–19 renumbered as 7–20
Subsection 16 amended

56.3 Committee treasurer and chairperson — duties.

1. Every candidate’s committee shall appoint a treasurer who shall be an Iowa resident who has

reached the age of majority. Every political committee shall appoint both a treasurer and a chairperson, each of whom shall have reached the age of majority. Every candidate’s committee shall maintain all of the committee’s funds in bank accounts in a financial institution located in Iowa. Every political committee shall either have an Iowa resident as treasurer or maintain all of the committee’s funds in bank accounts in a financial institution located in Iowa. An expenditure shall not be made by the treasurer or treasurer’s designee for or on behalf of a committee without the approval of the chairperson of the committee, or the candidate. Expenditures shall be remitted to the designated recipient within fifteen days of the date of the issuance of the payment.

2. An individual who receives contributions for a committee without the prior authorization of the chairperson of the committee or the candidate shall be responsible for either rendering the contributions to the treasurer within fifteen days of the date of receipt of the contributions, or depositing the contributions in the account maintained by the committee within seven days of the date of receipt of the contributions. A person who receives contributions for a committee shall, not later than fifteen days from the date of receipt of the contributions or on demand of the treasurer, render to the treasurer the contributions and an account of the total of all contributions, including the name and address of each person making a contribution in excess of ten dollars, the amount of the contributions, and the date on which the contributions were received. The treasurer shall deposit all contributions within seven days of receipt by the treasurer in an account maintained by the committee. All funds of a committee shall be segregated from any other funds held by officers, members, or associates of the committee or the committee’s candidate. However, if a candidate’s committee receives contributions only from the candidate, or if a permanent organization temporarily engages in activity which qualifies it as a political committee and all expenditures of the organization are made from existing general operating funds and funds are not solicited or received for this purpose from sources other than operating funds, then that committee is not required to maintain a separate account in a financial institution. The funds of a committee are not attachable for the personal debt of the committee’s candidate or an officer, member, or associate of the committee.

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

- a. All contributions made to or for the committee.
- b. The name and mailing address of every person making contributions in excess of ten dollars, and the date and amount of the contribution.
- c. All disbursements made from contributions by or on behalf of the committee.
- d. The name and mailing address of every person to whom any expenditure is made, the purpose of the expenditure, the date and amount of the expenditure and the name and address of, and office sought by each candidate, if any, on whose behalf the expendi-

ture was made. Notwithstanding this paragraph, the treasurer may keep a miscellaneous account for disbursements of less than five dollars which need only show the amount of the disbursement so long as the aggregate miscellaneous disbursements to any one person during a calendar year do not exceed one hundred dollars.

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

4. The treasurer and candidate in the case of a candidate's committee, and the treasurer and chairperson in the case of a political committee, shall preserve all records required to be kept by this section for a period of five years. However, a committee is not required to preserve any records for more than three years from the certified date of dissolution of the committee. For purposes of this section, the five-year period shall commence with the due date of the disclosure report covering the activity documented in the records.

95 Acts, ch 198, §3
Subsections 1, 2 and 4 amended

56.4 Reports filed with board or commissioner.

All statements and reports required to be filed under this chapter for a state office shall be filed with the board. All statements and reports required to be filed under this chapter for a county, city, or school office shall be filed with the commissioner. Statements and reports on a ballot issue shall be filed with the commissioner responsible under section 47.2 for conducting the election at which the issue is voted upon, except that statements and reports on a statewide ballot issue shall be filed with the board. Copies of any reports filed with a commissioner shall be provided by the commissioner to the board on its request. State statutory political committees shall file all statements and reports with the board. All other statutory political committees shall file the statements and reports with the commissioner with a copy sent to the board. The board shall retain statements and reports filed with the board for at least five years from the date of the election in which the committee is involved, or at least five years from the certified date of dissolution of the committee, whichever date is later. The commissioner shall retain statements and reports filed with the commissioner for at least three years from the date of the election in which the committee is involved, or at least three years from the certified date of dissolution of the committee, whichever date is later.

Political committees supporting or opposing candidates for both federal office and any elected office created by law or the Constitution of the state of Iowa shall file statements and reports with the board in addition to any federal reports required to be filed with the board. However, a political committee which is registered and filing full disclosure reports of all

financial activities with the federal election commission may file verified statements as provided in section 56.5.

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

95 Acts, ch 198, §4
Section amended

56.5 Organization statement.

1. Every committee, as defined in this chapter, shall file a statement of organization within ten days from the date of its organization. Unless formal organization has previously occurred, a committee is deemed to have organized as of the date that committee transactions exceed the financial activity threshold established in section 56.2, subsection 5 or 16.

2. The statement of organization shall include:

a. The name, purpose, mailing address, and telephone number of the committee. The committee name shall not duplicate the name of another committee organized under this section. For candidate's committees filing initial statements of organization on or after July 1, 1995, the candidate's name shall be contained within the committee name.

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

c. The name, address, office sought, and the party affiliation of all candidates whom the committee is supporting and, if the committee is supporting the entire ticket of any party, the name of the party. If, however, the committee is supporting several candidates who are not identified by name or are not of the same political affiliation, the committee may provide a statement of purpose in lieu of candidate names or political party affiliation.

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

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

f. A signed statement by the treasurer of the committee and the candidate, in the case of a candidate's committee, which shall verify that they are aware of the requirement to file disclosure reports if the committee, the committee officers, the candidate, or both the committee officers and the candidate receive contributions in excess of five hundred dollars in the aggregate, make expenditures in excess of five hundred dollars in the aggregate, or incur indebtedness in excess of five hundred dollars in the aggregate in a calendar year for the purpose of supporting or opposing any candidate for public office. In the case of political committees, statements shall be made by the treasurer of the committee and the chairperson.

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

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

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

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

5. A committee or organization not organized as a committee under this section which makes a contribution to a candidate's committee or political committee organized in Iowa shall disclose each contribution to the board. A committee or organization not organized as a committee under this section which is not registered and filing full disclosure reports of all financial activities with the federal election commission or another state's disclosure commission shall register and file full disclosure reports with the board pursuant to this chapter, and shall either appoint an eligible Iowa elector as committee or organization treasurer, or shall maintain all committee funds in an account in a financial institution located in Iowa. A committee which is currently filing a disclosure report in another jurisdiction shall either file a statement of organization under subsections 1 and 2 and file disclosure reports, the same as those required of committees organized only in Iowa, under section 56.6, or shall file one copy of a verified statement with the board and a second copy with the treasurer of the committee receiving the contribution. The form shall be completed and filed at the time the contribution is made. The verified statement shall be on forms prescribed by the board and shall attest that the committee is filing reports with the federal election commission or in a jurisdiction with reporting requirements which are substantially similar to those of this chapter, and that the contribution is made from an account which does not accept contributions which would be in violation of section 56.15. The form shall include the complete name, address, and telephone number of the contributing committee, the state or federal jurisdiction under which it is registered or operates, the identification of any parent entity or other affiliates or sponsors, its purpose, the name, address, and signature of an Iowa resident authorized to receive service of original notice and the name and address of the receiving committee, the amount of the cash or in-kind contribution, and the date the contribution was made.

95 Acts, ch 198, §5-7
Subsections 1 and 5 amended
Subsection 2, paragraph a amended

56.5A Candidate's committee.

Each candidate for state, county, city, or school office shall organize one, and only one, candidate's committee for a specific office sought when the can-

didate receives contributions in excess of five hundred dollars in the aggregate, makes expenditures in excess of five hundred dollars in the aggregate, or incurs indebtedness in excess of five hundred dollars in the aggregate in a calendar year. A political committee shall not be established to support or oppose only one candidate for office, except that a political committee may be established to support or oppose approval of a single judge standing for retention.

95 Acts, ch 198, §8
Section amended

56.6 Disclosure reports.

1. a. Each treasurer of a committee shall file with the board or commissioner disclosure reports of contributions received and disbursed on forms prescribed by rules as provided by chapter 17A. The reports from all committees, except those committees for municipal and school elective offices and for local ballot issues, shall be filed on the nineteenth day or mailed bearing a United States postal service postmark dated on or before the nineteenth day of January, May, July, and October of each year. The May, July, and October reports shall be current as of five days prior to the filing deadline. The January report shall be the annual report covering activity through December 31. However, a state, county, or city statutory political committee is not required to file the May and July reports for a year in which no primary or general election is held at the respective state, county, or city level. A candidate's committee, other than for municipal and school elective offices, for a year in which the candidate is not standing for election, is not required to file the May, July, and October reports. Reports for committees for a ballot issue placed before the voters of the entire state shall be filed at the January, May, July, and October deadlines.

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

c. A candidate's committee for a candidate for the general assembly at a special election shall file a report by the fourteenth day prior to the special election which is current through the nineteenth day prior to the special election.

d. Committees for municipal and school elective offices and local ballot issues shall file their first

reports five days prior to any election in which the name of the candidate or the local ballot issue which they support or oppose appears on the printed ballot and shall file their next report on the first day of the month following the final election in a calendar year in which the candidate's name or the ballot issue appears on the ballot. A committee supporting or opposing a candidate for a municipal or school elective office or a local ballot issue shall also file disclosure reports on the nineteenth day of January and October of each year in which the candidate or ballot issue does not appear on the ballot and on the nineteenth day of January, May, and July of each year in which the candidate or ballot issue appears on the ballot, until the committee dissolves. These reports shall be current to five days prior to the filing deadline and are considered timely filed if mailed bearing a United States postal service postmark on or before the due date.

e. A state statutory political committee and congressional district committees as authorized by the constitution of the state statutory political committee are not subject to this subsection if the state statutory political committee and congressional district political committees file copies of campaign disclosure reports as required by federal law with the board at the times the reports are required to be filed under federal law, provided that the federal reports contain all information required by this chapter. A committee of a national political party is not required to file a disclosure report with the board if it is required by federal law to file a campaign disclosure report with a federal agency.

2. If any committee, after having filed a statement of organization or one or more disclosure reports, dissolves or determines that it shall no longer receive contributions or make disbursements, the treasurer of the committee shall notify the board or the commissioner within thirty days following such dissolution by filing a dissolution report on forms prescribed by the board. Moneys refunded in accordance with a dissolution statement shall be considered a disbursement or expense but the names of persons receiving refunds need not be released or reported unless the contributors' names were required to be reported when the contribution was received.

3. Each report under this section shall disclose:

a. The amount of cash on hand at the beginning of the reporting period.

b. The name and mailing address of each person who has made one or more contributions of money to the committee including the proceeds from any fund-raising events except those reportable under paragraph "f" of this subsection, when the aggregate amount in a calendar year exceeds the amount specified in the following schedule:

- (1) For any candidate for school or township office \$ 25
- (2) For any candidate for city office \$ 25
- (3) For any candidate for county office \$ 25
- (4) For any candidate for the general assembly \$ 25

- (5) For any candidate for the Congress of the United States \$100
- (6) For any candidate for statewide office \$ 25
- (7) For any committee of a national political party \$200
- (8) For any state statutory political committee \$200
- (9) For any county statutory political committee \$ 50
- (10) For any other political committee \$ 25
- (11) For any ballot issue \$ 25

c. The total amount of contributions made to the political committee during the reporting period and not reported under paragraph "b" of this subsection.

d. The name and mailing address of each person who has made one or more in-kind contributions to the committee when the aggregate market value of the in-kind contribution in a calendar year exceeds the amount specified in subsection 3, paragraph "b", of this section. In-kind contributions shall be designated on a separate schedule from schedules showing contributions of money and shall identify the nature of the contribution and provide its estimated fair market value.

e. Each loan to any person or committee within the calendar year in an aggregate amount in excess of those amounts enumerated in the schedule in paragraph "b" of this subsection, together with the name and mailing address of the lender and endorsers, the date and amount of each loan received, and the date and amount of each loan repayment. Loans received and loan repayments shall be reported on a separate schedule.

f. The total amount of proceeds from any fund-raising event. Contributions and sales at fund-raising events which involve the sale of a product acquired at less than market value and sold for an amount of money in excess of the amount specified in paragraph "b" of this subsection shall be designated separately from in-kind and monetary contributions and the report shall include the name and address of the donor, a description of the product, the market value of the product, the sales price of the product, and the name and address of the purchaser.

g. The name and mailing address of each person to whom disbursements or loan repayments have been made by the committee from contributions during the reporting period and the amount, purpose, and date of each disbursement except that disbursements of less than five dollars may be shown as miscellaneous disbursements so long as the aggregate miscellaneous disbursements to any one person during a calendar year do not exceed one hundred dollars. If disbursements are made to a consultant, the consultant shall provide the committee with a statement of disbursements made by the consultant during the reporting period showing the name and address of the recipient, amount, purpose, and date to the same extent as if made by the candidate, which shall be included in the report by the committee.

h. The amount and nature of debts and obliga-

tions owed in excess of those amounts stated in the schedule in paragraph "b" of this subsection by the committee. Loans made to a committee and reported under paragraph "b" of this subsection shall not be considered a debt or obligation under this paragraph. A loan made by a committee to any person shall be considered a disbursement.

i. If a person listed under paragraph "b", "d", "e", or "f" as making a contribution or loan to or purchase from a candidate's committee is related to the candidate within the third degree of consanguinity or affinity, the existence of that person's family relationship shall be indicated on the report.

j. The name and mailing address of each person with whom a candidate's committee has entered into a contract during the reporting period for future or continuing performance and the nature of the performance, period of performance and total, anticipated compensation for performance. For a report filed under subsection 1, paragraph "b", this paragraph also requires the reporting of estimates of performance which the candidate's committee reasonably expects to contract for during the balance of the period running until thirty days after the election.

k. Other pertinent information required by this chapter, by rules adopted pursuant to this chapter, or forms approved by the board.

4. If the report is the first report filed by the committee, the report shall include all information required under subsection 3 covering the period from the beginning of the committee's financial activity, even if from a different calendar year, through the end of the current reporting period. If no contributions have been accepted nor any disbursements made or indebtedness incurred during that reporting period, the treasurer of the committee shall file a disclosure statement which shows only the amount of cash on hand at the beginning of the reporting period.

5. A committee shall not dissolve until all loans, debts and obligations are paid, forgiven, or transferred and the remaining money in the account is distributed according to the organization statement. If a loan is transferred or forgiven, the amount of the transferred or forgiven loan must be reported as an in-kind contribution and deducted from the loans payable balance on the disclosure form. If, upon review of a committee's statement of dissolution and final report, the board determines that the requirements for dissolution have been satisfied, the dissolution shall be certified and the committee relieved of further filing requirements.

A statutory political committee is prohibited from dissolving, but may be placed in an inactive status upon the approval of the board. Inactive status may be requested for a statutory political committee when no officers exist and the statutory political committee has ceased to function. The request shall be made by the previous treasurer or chairperson of the committee and by the appropriate state statutory political committee. A statutory political committee granted inactive status shall not solicit or expend funds in its name until the committee reorganizes and fulfills the

requirements of a political committee under this chapter.

6. A permanent organization temporarily engaging in activity which would qualify it as a political committee shall organize a political committee and shall keep the funds relating to that political activity segregated from its operating funds. The political committee shall file reports in accordance with this chapter. When the permanent organization ceases to be involved in the political activity, it shall dissolve the political committee.

A communication regarding any subject by a permanent organization, which is a nonprofit organization, to its dues-paying members is not political activity requiring the organization of a political committee, reporting, or disclosure pursuant to this chapter.

As used in this subsection, "*permanent organization*" means an organization which is continuing, stable, and enduring, and which was originally organized for purposes other than engaging in election activities.

95 Acts, ch 198, §9, 10

For transition provisions concerning the reporting requirements pursuant to subsection 4, see 95 Acts, ch 198, §20

Subsection 1, paragraphs a and d amended

Subsections 4 and 5 amended

56.12 Contribution in name of another — prohibited.

A person shall not make a contribution or expenditure in the name of another person, and a person shall not knowingly accept a contribution or expenditure made by one person in the name of another. For the purpose of this section, a contribution or expenditure made by one person which is ultimately reimbursed by another person who has not been identified as the ultimate source or recipient of the funds is considered to be an illegal contribution or expenditure in the name of another.

Any candidate or committee receiving funds, the original source of which was a loan, shall be required to list the lender as a contributor. No candidate or committee shall knowingly receive funds from a contributor who has borrowed the money without listing the original source of said money.

95 Acts, ch 198, §11

Unnumbered paragraph 1 amended

56.13 Independent expenditures.

1. Action involving a contribution or expenditure which must be reported under this chapter and which is taken by any person, candidate's committee or political committee on behalf of a candidate, if known and approved by the candidate, shall be deemed action by the candidate and reported by the candidate's committee. It shall be presumed that a candidate approves the action if the candidate had knowledge of it and failed to file a statement of disavowal with the commissioner or board and take corrective action within seventy-two hours of the action. A person, candidate's committee or political committee taking such action independently of that candidate's committee shall notify that candidate's

committee in writing within twenty-four hours of taking the action. The notification shall provide that candidate's committee with the cost of the promotion at fair market value. A copy of the notification shall be sent to the board.

Any person who makes expenditures or incurs indebtedness, other than incidental expenses incurred in performing volunteer work, in support or opposition of a candidate for public office shall notify the appropriate committee and provide necessary information for disclosure reports.

2. If a person, other than a political committee, makes one or more expenditures in excess of five hundred dollars in the aggregate, or incurs indebtedness in excess of five hundred dollars in the aggregate, in any one calendar year for purposes of supporting or opposing a ballot issue, the person shall file a statement of activity within ten days of taking the action exceeding the threshold. The statement shall contain information identifying the person filing the statement, identifying the ballot issue, and indicating the position urged by the person with regard to the ballot issue. The person shall file reports indicating the dates on which the expenditures or incurrence of indebtedness took place; a description of the nature of the action taken which resulted in the expenditures or debt; and the cost of the promotion at fair market value. For a local ballot issue, the reports shall be filed five days prior to any election in which the ballot issue appears and on the first day of the month following the election, as well as on the nineteenth day of January, May, and July of each year in which the ballot issue appears on the ballot and on the nineteenth day of January and October of each year in which the ballot issue does not appear on the ballot. For a statewide ballot issue, reports shall be filed on the nineteenth day of January, May, and July of each year. The reports shall be current to five days prior to the filing deadline, and are considered timely filed if mailed bearing a United States postal service postmark on or before the due date. Filing obligations shall cease when the person files a statement of discontinuation indicating that the person's financial activity in support of or in opposition to the ballot issue has ceased. Statements and reports shall be filed with the commissioner responsible under section 47.2 for conducting the election at which the issue is voted upon, except that reports on a statewide ballot issue shall be filed with the board.

3. A person taking action involving the making of an expenditure or incurrence of indebtedness in support or opposition to a ballot issue independently of a political committee shall, within seventy-two hours of taking the action, notify in writing any political committee which advocates the same position with regard to the ballot issue as the person taking the action. The notification shall provide the political committee with the cost of the promotion at fair market value. A copy of the notification shall be sent to the board. It shall be presumed that a benefited committee approves the action if the committee fails

to file a statement of disavowal with the commissioner or board and takes corrective action within ten days of the action. Action approved by a committee shall be reported as a contribution by the committee.

4. This section shall not be construed to require duplicate reporting of anything reported under this chapter by a political committee except that actions which constitute contributions in kind shall be reported by the benefited committee. This section shall not be construed to require reporting of action by any person which does not constitute a contribution.

95 Acts, ch 198, §12
Subsection 2 amended

56.14 Political material — solicitations — yard signs.

1. A person who causes the publication or distribution of published material designed to promote or defeat the nomination or election of a candidate for public office or the passage of a constitutional amendment or public measure shall include conspicuously on the published material the identity and address of the person responsible for the material. If the person responsible is an organization, the name of one officer of the organization shall appear on the material. However, if the organization is a committee which has filed a statement of organization under this chapter, only the name of the committee is required to be included on the published material. Published material designed to promote or defeat the nomination or election of a candidate for public office or the passage of a constitutional amendment or public measure which contains language or depictions which a reasonable person would understand as asserting that an entity which is incorporated or is a registered committee had authored the material shall, if the entity is not incorporated or a registered committee, include conspicuously on the published material a statement that the apparent organization or committee is not incorporated or a registered committee in addition to the disclaimer statement required by this section. For purposes of this section, "registered committee" means a committee which has an active statement of organization filed under section 56.5.

2. This section does not apply to the editorials or news articles of a newspaper or magazine which are not political advertisements. For the purpose of this section, "published material" means any newspaper, magazine, shopper, outdoor advertising facility, poster, direct mailing, brochure, or any other form of printed general public political advertising; however, the identification need not be conspicuous on posters. This section does not apply to yard signs, bumper stickers, pins, buttons, pens, matchbooks, and similar small items upon which the inclusion of the disclaimer would be impracticable or to published material which is subject to federal regulations regarding a disclaimer requirement.

3. Yard signs shall not be placed on any property which adjoins a city, county, or state roadway sooner than forty-five days preceding a primary or general

election and shall be removed within seven days after the primary or general election, in which the name of the particular candidate or ballot issue described on the yard sign appears on the ballot. Yard signs are subject to removal by highway authorities as provided in section 319.13, or by county or city law enforcement authorities in a manner consistent with section 319.13. The placement or erection of yard signs shall be exempt from the requirements of chapter 480. Notice may be provided to the chairperson of the appropriate county central committee if the highway authorities are unable to provide notice to the candidate, candidate's committee, or political committee regarding the yard sign.

4. This section does not prohibit the placement of yard signs on agricultural land owned by individuals or by a family farm operation as defined in section 9H.1, subsections 8, 8A, 9, and 10; does not prohibit the placement of yard signs on property owned by private individuals who have rented or leased the property to a corporation, if the prior written permission of the property owner is obtained; and does not prohibit the placement of yard signs on residential property owned by a corporation but rented or leased to a private individual if the prior permission of the renter or lessee is obtained. For the purposes of this chapter, "agricultural land" means agricultural land as defined in section 9H.1.

5. This section shall not be construed to require the inclusion on published material of information which discloses the identity or address of any individual who is acting independently and using the individual's own modest resources to publish or distribute the material.

95 Acts, ch 198, §13
Section amended

56.15 Financial institution, insurance company, and corporation restrictions.

1. Except as provided in subsections 3 and 4, it is unlawful for an insurance company, savings and loan association, bank, credit union, or corporation organized pursuant to the laws of this state, the United States, or any other state, territory, or foreign country, whether for profit or not, or an officer, agent, or representative acting for such insurance company, savings and loan association, bank, credit union, or corporation, to contribute any money, property, labor, or thing of value, directly or indirectly, to a committee, or for the purpose of influencing the vote of an elector, except that such resources may be so expended in connection with a utility franchise election held pursuant to section 364.2, subsection 4, or a ballot issue. All such expenditures are subject to the disclosure requirements of this chapter.

2. Except as provided in subsection 3, it is unlawful for a member of a committee, or its employee or representative, except a ballot issue committee, or for a candidate for office or the representative of the candidate, to solicit, request, or knowingly receive from an insurance company, savings and loan association, bank, credit union, or corporation organized

pursuant to the laws of this state, the United States, or any other state, territory, or foreign country, whether for profit or not, or its officer, agent, or representative, any money, property, or thing of value belonging to the insurance company, savings and loan association, bank, or corporation for campaign expenses, or for the purpose of influencing the vote of an elector. This section does not restrain or abridge the freedom of the press or prohibit the consideration and discussion in the press of candidacies, nominations, public officers, or public questions.

3. It is lawful for an insurance company, savings and loan association, bank, credit union, and corporation organized pursuant to the laws of this state, the United States, or any other state or territory, whether or not for profit, and for their officers, agents, and representatives, to use the money, property, labor, or any other thing of value of the entity for the purposes of soliciting its stockholders, administrative officers, and members for contributions to a committee sponsored by that entity and of financing the administration of a committee sponsored by that entity. The entity's employees to whom the foregoing authority does not extend may voluntarily contribute to such a committee but shall not be solicited for contributions. All contributions made under this subsection are subject to the disclosure requirements of this chapter. A committee member, committee employee, committee representative, candidate, or representative referred to in subsection 2 lawfully may solicit, request, and receive money, property and other things of value from a committee sponsored by an insurance company, savings and loan association, bank, credit union, or corporation as permitted by this subsection.

4. The restrictions imposed by this section relative to making, soliciting or receiving contributions shall not apply to a nonprofit corporation or organization which uses those contributions to encourage registration of voters and participation in the political process, or to publicize public issues, or both, but does not use any part of those contributions to endorse or oppose any candidate for public office. A nonprofit corporation or organization may use contributions solicited or received to support or oppose ballot issues but the expenditures shall be disclosed by the nonprofit corporation or organization in the manner provided for a permanent organization temporarily engaged in a political activity under section 56.6.

This section does not prohibit a family farm corporation, as defined in section 9H.1, from placing a yard sign on agricultural land, and does not prohibit the placement of yard signs, with the prior written permission of the individual property owner, on property rented or leased by a corporation from private individuals, subject to the requirements of section 56.14. This section also does not prohibit the placement of a yard sign on residential property that is owned by a corporation, but rented or leased to a private individual, if the prior permission of the renter or lessee is obtained.

5. Any person convicted of a violation of any of the provisions of this section shall be guilty of a serious misdemeanor.

95 Acts, ch 198, §14
Subsections 1, 2 and 3 amended

56.19 Fund created.

The "Iowa election campaign fund" is created within the office of the treasurer of state. The fund shall consist of funds paid by persons as provided in section 56.18. The treasurer of state shall maintain within the fund a separate account for each political party as defined in section 43.2. The director of revenue and finance shall remit funds collected as provided in section 56.18 to the treasurer of state who shall deposit such funds in the appropriate account within the Iowa election campaign fund. All contributions directed to the Iowa election campaign fund by taxpayers who do not designate any one political party to receive their contributions shall be divided by the director of revenue and finance equally among each account currently maintained in the fund. However, at any time when more than two accounts are being maintained within the fund contributions to the fund by taxpayers who do not designate any one political party to receive their contributions shall be divided among the accounts in the same proportion as the number of registered voters declaring affiliation with each political party for which an account is maintained bears to the total number of registered voters who have declared an affiliation with a political party. Any interest income received by the treasurer of state from investment of moneys deposited in the fund shall be deposited in the Iowa election campaign fund. Such funds shall be subject to payment to the chairperson of the specified political party by the director of revenue and finance in the manner provided by section 56.22.

95 Acts, ch 67, §53
Terminology change applied

56.41 Uses of campaign funds.

1. A candidate and the candidate's committee shall use campaign funds only for campaign purposes, educational and other expenses associated with the duties of office, or constituency services, and shall not use campaign funds for personal expenses or personal benefit. The purchase of subscriptions to newspapers from or which circulate within the area represented by the office which a candidate is seeking or holds is presumed to be an expense that is associated with the duties of the campaign for and duties of office.

2. Campaign funds shall not be used for any of the following purposes:

a. Payment of civil or criminal penalties. However, payment of civil penalties relating to campaign finance and disclosure requirements is permitted.

b. Satisfaction of personal debts, other than campaign loans.

c. Personal services, including the services of attorneys, accountants, physicians, and other professional persons. However, payment for personal

services directly related to campaign activities is permitted.

d. Clothing or laundry expense of a candidate or members of the candidate's family.

e. Purchase of or installment payments for a motor vehicle. However, a candidate may lease a motor vehicle during the duration of the campaign if the vehicle will be used for campaign purposes. If a vehicle is leased, detailed records shall be kept on the use of the vehicle and the cost of noncampaign usage shall not be paid from campaign funds. Candidates and campaign workers may be reimbursed for actual mileage for campaign related travel at a rate not to exceed the current rate of reimbursement allowed under the standard mileage rate method for computation of business expenses pursuant to the Internal Revenue Code.

f. Mortgage payments, rental payments, furnishings, or renovation or improvement expenses for a permanent residence of a candidate or family member, including a residence in the state capital during a term of office or legislative session.

g. Membership in professional organizations.

h. Membership in service organizations, except those organizations which the candidate joins solely for the purpose of enhancing the candidacy.

i. Meals, groceries, or other food expense, except for tickets to meals that the candidate attends solely for the purpose of enhancing the candidacy or the candidacy of another person. However, payment for food and drink purchased for campaign related purposes and for entertainment of campaign volunteers is permitted.

j. Payments clearly in excess of the fair market value of the item or service purchased.

3. The board shall adopt rules which list items that represent proper campaign expenses.

95 Acts, ch 198, §15
Subsection 1 amended

56.42 Transfer of campaign funds.

1. In addition to the uses permitted under section 56.41, a candidate's committee may only transfer campaign funds in one or more of the following ways:

a. Contributions to charitable organizations.

b. Contributions to national, state, or local political party central committees, or to partisan political committees organized to represent persons within the boundaries of a congressional district.

c. Transfers to the treasurer of state for deposit in the general fund of the state, or to the appropriate treasurer for deposit in the general fund of a political subdivision of the state.

d. Return of contributions to contributors on a pro rata basis, except that any contributor who contributed five dollars or less may be excluded from the distribution.

e. Contributions to another candidate's committee when the candidate for whom both committees are formed is the same person.

2. If an unexpended balance of campaign funds remains when a candidate's committee dissolves, the unexpended balance shall be transferred pursuant to subsection 1.

3. A candidate or candidate's committee making a transfer of campaign funds pursuant to subsection 1 or 2 shall not place any requirements or conditions on the use of the campaign funds transferred.

4. A candidate or candidate's committee shall not transfer campaign funds except as provided in this section.

5. A candidate, candidate's committee, or any other person shall not directly or indirectly receive or transfer campaign funds with the intent of circumventing the requirements of this section. A candidate for statewide or legislative office shall not establish, direct, or maintain a political committee.

6. An individual or a political committee shall not knowingly make transfers or contributions to a candidate or candidate's committee for the purpose of transferring the funds to another candidate or candidate's committee to avoid the disclosure of the source of the funds pursuant to this chapter. A candidate or candidate's committee shall not knowingly accept transfers or contributions from an individual or political committee for the purpose of transferring funds to another candidate or candidate's committee as prohibited by this subsection. A candidate or candidate's committee shall not accept transfers or contributions which have been transferred to another candidate or candidate's committee as prohibited by this subsection. The board shall notify candidates of the prohibition of such transfers and contributions under this subsection.

95 Acts, ch 198, §16
Subsection 1, paragraphs b and c amended

56.43 Campaign property.

1. Equipment, supplies, or other materials purchased with campaign funds or received in-kind are

campaign property. Campaign property belongs to the candidate's committee and not to the candidate. Campaign property which has a value of five hundred dollars or more at the time it is acquired by the committee shall be separately disclosed as committee inventory on reports filed pursuant to section 56.6, including a declaration of the approximate current value of the property. Such property shall continue to be reported as committee inventory until it is disposed of by the committee or until the property has a residual value of less than one hundred dollars. However, consumable campaign property is not required to be reported as committee inventory, regardless of the initial value of the consumable campaign property. "*Consumable campaign property*" means stationery, yard signs, and other campaign materials which have been permanently imprinted to be specific to a candidate or election.

2. Upon dissolution of the candidate's committee, a report accounting for the disposition of all items of campaign property, excluding consumable campaign property, having a residual value of one hundred dollars or more shall be filed with the board. Campaign property, excluding consumable campaign property, having a residual value of one hundred dollars or more shall be disposed of by one of the following methods:

a. Sale of the property at fair market value, in which case the proceeds shall be treated the same as other campaign funds.

b. Donation of the property under one of the options for transferring campaign funds set forth in section 56.42.

95 Acts, ch 198, §17
Section amended

CHAPTER 68B

CONFLICTS OF INTEREST OF PUBLIC OFFICERS AND EMPLOYEES

68B.2A Conflicts of interest.

1. Any person who serves or is employed by the state or a political subdivision of the state shall not engage in any outside employment or activity which is in conflict with the person's official duties and responsibilities. In determining whether particular outside employment or activity creates an unacceptable conflict of interest, situations in which an unacceptable conflict shall be deemed to exist shall include, but not to be limited to, any of the following:

a. The outside employment or activity involves the use of the state's or the political subdivision's time, facilities, equipment, and supplies or the use of the state or political subdivision badge, uniform, business card, or other evidences of office or employment to give the person or member of the person's immediate family an advantage or pecuniary benefit that is not available to other similarly situated mem-

bers or classes of members of the general public. This paragraph does not apply to off-duty peace officers who provide private duty security or fire fighters or emergency medical care providers certified under chapter 147A who provide private duty fire safety or emergency medical services while carrying their badge or wearing their official uniform, provided that the person has secured the prior approval of the agency or political subdivision in which the person is regularly employed to engage in the activity. For purposes of this subsection, a person is not "*similarly situated*" merely by being or being related to a person who serves or is employed by the state or a political subdivision of the state.

b. The outside employment or activity involves the receipt of, promise of, or acceptance of money or other consideration by the person, or a member of the person's immediate family, from anyone other than

the state or the political subdivision for the performance of any act that the person would be required or expected to perform as a part of the person's regular duties or during the hours during which the person performs service or work for the state or political subdivision of the state.

c. The outside employment or activity is subject to the official control, inspection, review, audit, or enforcement authority of the person, during the performance of the person's duties of office or employment.

2. If the outside employment or activity is employment or activity described in subsection 1, paragraph "a" or "b", the person shall immediately cease the employment or activity. If the outside employment or activity is employment or activity described in subsection 1, paragraph "c", or constitutes any other unacceptable conflict of interest, unless otherwise provided by law, the person shall take one of the following courses of action:

a. Cease the outside employment or activity.

b. Publicly disclose the existence of the conflict and refrain from taking any official action or performing any official duty that would detrimentally affect or create a benefit for the outside employment or activity. For purposes of this paragraph, "official action" or "official duty" includes, but is not limited to, participating in any vote, taking affirmative action to influence any vote, granting any license or permit, determining the facts or law in a contested case or rulemaking proceeding, conducting any inspection, or providing any other official service or thing that is not available generally to members of the public in order to further the interests of the outside employment or activity.

3. Unless otherwise specifically provided the requirements of this section shall be in addition to, and shall not supersede, any other rights or remedies provided by law.

95 Acts, ch 41, §1
Subsection 1, paragraph a amended

68B.32 Independent ethics and campaign disclosure board — established.

1. An Iowa ethics and campaign disclosure board is established as an independent agency. Effective January 1, 1994, the board shall administer this chapter and set standards for, investigate complaints relating to, and monitor the ethics of officials, employees, lobbyists, and candidates for office in the executive branch of state government. The board shall also administer and set standards for, investigate complaints relating to, and monitor the campaign finance practices of candidates for public office. The board shall consist of six members and shall be balanced as to political affiliation as provided in section 69.16. The members shall be appointed by the governor, subject to confirmation by the senate.

2. Members shall serve staggered six-year terms beginning and ending as provided in section 69.19. Any vacancy on the board shall be filled by appointment for the unexpired portion of the term, within

ninety days of the vacancy and in accordance with the procedures for regular appointments. A member of the board may be reappointed to serve additional terms on the board. Members may be removed in the manner provided in chapter 69.

3. The board shall annually elect one member to serve as the chairperson of the board and one member to serve as vice chairperson. The vice chairperson shall act as the chairperson in the absence or disability of the chairperson or in the event of a vacancy in that office.

4. Members of the board shall receive a per diem as specified in section 7E.6 while conducting business of the board, and payment of actual and necessary expenses incurred in the performance of their duties. Members of the board shall file statements of financial interest under section 68B.35.

5. The board shall employ a full-time executive director who shall be the board's chief administrative officer. The board shall employ or contract for the employment of legal counsel notwithstanding section 13.7, and any other personnel as may be necessary to carry out the duties of the board. The board's legal counsel shall be the chief legal officer of the board, and shall advise the board on all legal matters relating to the administration of this chapter and chapter 56. The state may be represented by the board's legal counsel in any civil action regarding the enforcement of this chapter or chapter 56, or, at the board's request, the state may be represented by the office of the attorney general. Notwithstanding section 19A.3, all of the board's employees, except for the executive director and legal counsel, shall be employed subject to the merit system provisions of chapter 19A. The salary of the executive director shall be fixed by the board, within the range established by the general assembly. The salary of the legal counsel shall be fixed by the board, within a salary range established by the department of personnel for a position requiring similar qualifications and experience.

95 Acts, ch 198, §18
Subsection 5 amended

68B.32A Duties of the board.

The duties of the board shall include, but are not limited to, all of the following:

1. Adopt rules pursuant to chapter 17A and conduct hearings under sections 68B.32B and 68B.32C and chapter 17A, as necessary to carry out the purposes of this chapter and chapter 56.

2. Develop, prescribe, furnish, and distribute any forms necessary for the implementation of the procedures contained in this chapter and chapter 56 for the filing of reports and statements by persons required to file the reports and statements under this chapter and chapter 56.

The board may establish a process to assign signature codes to a person or committee for purposes of facilitating an electronic filing procedure. The assignment of signature codes shall be kept confidential, notwithstanding section 22.2.

3. Review the contents of all campaign finance disclosure reports and statements filed with the board and promptly advise each person or committee of errors found. The board may verify information contained in the reports with other parties to assure accurate disclosure. The board may also verify information by requesting that a candidate or committee produce copies of receipts, bills, logbooks, or other memoranda of reimbursements of expenses to a candidate for expenses incurred during a campaign. The board, upon its own motion, may initiate action and conduct a hearing relating to requirements under chapter 56. The board may require a county commissioner of elections to periodically file summary reports with the board.

4. Receive and file registration and reporting from lobbyists of the executive branch of state government, client disclosure from clients of lobbyists of the executive branch of state government, and personal financial disclosure information from officials and employees in the executive branch of state government who are required to file personal financial disclosure information under this chapter. The board, upon its own motion, may initiate action and conduct a hearing relating to reporting requirements under this chapter.

5. Prepare and publish a manual setting forth examples of approved uniform systems of accounts and approved methods of disclosure for use by persons required to file statements and reports under this chapter and chapter 56. The board shall also prepare and publish other educational materials, and any other reports or materials deemed appropriate by the board. The board shall annually provide all officials and state employees with notification of the contents of this chapter and chapter 56 by distributing copies of educational materials to associations that represent the interests of the various governmental entities for dissemination to their membership.

6. Assure that the statements and reports which have been filed in accordance with this chapter and chapter 56 are available for public inspection and copying during the regular office hours of the office in which they are filed and not later than by the end of the day during which a report or statement was received. Rules adopted relating to public inspection and copying of statements and reports may include a charge for any copying and mailing of the reports and statements, shall provide for the mailing of copies upon the request of any person and upon prior receipt of payment of the costs by the board, and shall prohibit the use of the information copied from reports and statements for soliciting contributions or for any commercial purpose by any person other than statutory political committees.

7. Require that the candidate of a candidate's committee, or the chairperson of a political committee, is responsible for filing disclosure reports under chapter 56, and shall receive notice from the board if the committee has failed to file a disclosure report at the time required under chapter 56. A candidate of a candidate's committee, or the chairperson of a political committee, may be subject to a civil penalty for failure to file a disclosure report required under section 56.6, subsection 1.

8. Establish and impose penalties, and recommendations for punishment of persons who are subject to penalties of or punishment by the board or by other bodies, for the failure to comply with the requirements of this chapter or chapter 56.

9. Determine, in case of dispute, at what time a person has become a candidate.

10. Preserve copies of reports and statements filed with the board for a period of five years from the date of receipt.

11. Establish a procedure for requesting and issuing formal and informal board opinions to local officials and employees and to persons subject to the authority of the board under this chapter or chapter 56. Advice contained in formal board opinions shall, if followed, constitute a defense to a complaint filed with the board alleging a violation of this chapter, chapter 56, or rules of the board that is based on the same facts and circumstances.

12. Establish rules relating to ethical conduct for persons holding a state office in the executive branch of state government, including candidates, and for employees of the executive branch of state government and regulations governing the conduct of lobbyists of the executive branch of state government, including but not limited to conflicts of interest, abuse of office, misuse of public property, use of confidential information, participation in matters in which an official or state employee has a financial interest, and rejection of improper offers.

13. Impose penalties upon, or refer matters relating to, persons who discharge any employee, or who otherwise discriminate in employment against any employee, for the filing of a complaint with, or the disclosure of information to, the board if the employee has filed the complaint or made the disclosure in good faith.

14. Establish fees, where necessary, to cover the costs associated with preparing, printing, and distributing materials to persons subject to the authority of the board.

95 Acts, ch 198, §19
Subsection 2 amended

CHAPTER 69

VACANCIES — REMOVAL — TERMS

69.14 Special election to fill vacancies.

A special election to fill a vacancy shall be held for a representative in Congress, or senator or representative in the general assembly, when the body in which such vacancy exists is in session, or will convene prior to the next general election, and the governor shall order, not later than five days from the date the vacancy exists, a special election, giving not less than forty days' notice of such election. In the event the special election is to fill a vacancy in the general assembly while it is in session or within

forty-five days of the convening of any session, the time limit provided in this section shall not apply and the governor shall order such special election at the earliest practical time, giving at least eighteen days' notice of the special election. Any special election called under this section must be held on a Tuesday and shall not be held on the same day as a school election within the district.

95 Acts, ch 189, §17
Section amended

CHAPTER 70A

FINANCIAL PROVISIONS FOR PUBLIC OFFICERS AND EMPLOYEES

70A.20 Employees disability program.

A state employees disability insurance program is created, which shall be administered by the director of the department of personnel and which shall provide disability benefits in an amount and for the employees as provided in this section. The monthly disability benefits shall provide twenty percent of monthly earnings if employed less than one year, forty percent of monthly earnings if employed one year or more but less than two years, and sixty percent of monthly earnings thereafter, reduced by primary and family social security determined at the time social security disability payments commence, railroad retirement disability income, workers' compensation if applicable, and any other state-sponsored sickness or disability benefits payable. However, the amount of benefits payable under the Iowa public employees' retirement system pursuant to chapter 97B shall not reduce the benefits payable pursuant to this section. Subsequent social security or railroad retirement increases shall not be used to further reduce the insurance benefits payable. As used in this section, "*primary and family social security*" shall not include social security benefits awarded to a disabled adult child of the disabled state employee who does not reside with the disabled state employee if the social security benefits were awarded to the disabled adult child prior to the approval of the state employee's benefits under this section, regardless of whether the United States social security administration records the benefits to the social security number of the disabled adult child, the disabled state employee, or any other family member, and such social security benefits shall not reduce the benefits payable pursuant to this section. As used in this section, unless the context otherwise requires,

"*adult*" means a person who is eighteen years of age or older. State employees shall receive credit for the time they were continuously employed prior to and on July 1, 1974. The following provisions apply to the employees disability insurance program:

1. Waiting period, ninety working days of continuous sickness or accident disability or the expiration of accrued sick leave, whichever is greater.

2. Maximum period benefits paid for both accident or sickness disability:

a. If the disability occurs prior to the time the employee attains the age of sixty-one years, the maximum benefit period shall end sixty months after continuous benefit payments begin or on the date on which the employee attains the age of sixty-five years, whichever is later.

b. If the disability occurs on or after the time the employee attains the age of sixty-one years but prior to the age of sixty-nine years, the maximum benefit period shall end sixty months after continuous benefit payments begin or on the date on which the employee attains the age of seventy years, whichever is earlier.

c. If the disability occurs on or after the time the employee attains the age of sixty-nine years, the maximum benefit period shall end twelve months after continuous benefit payments begin.

3. a. Minimum and maximum benefits, not less than fifty dollars per month and not exceeding two thousand dollars per month.

b. In no event shall benefits exceed one hundred percent of the claimant's predisability covered monthly compensation.

4. All permanent full-time state employees shall be covered under the employees disability insurance program, except board members and members of

commissions who are not full-time state employees, and state employees who on July 1, 1974, are under another disability program financed in whole or in part by the state, and state employees who have agreed to participation in another disability program through a collective bargaining agreement. For purposes of this section, members of the general assembly serving on or after January 1, 1989, are eligible for the plan during their tenure in office, on the basis of enrollment rules established for full-time state employees excluded from collective bargaining as provided in chapter 20.

95 Acts, ch 162, §9
Section amended

70A.26 Disaster service volunteer leave.

An employee of an appointing authority who is a certified disaster service volunteer of the American red cross may be granted leave with pay from work for not more than fifteen working days in any twelve-month period to participate in disaster relief services for the American red cross at the request of the

American red cross for the services of that employee and upon the approval of the employee's appointing authority without loss of seniority, pay, vacation time, personal days, sick leave, insurance and health coverage benefits, or earned overtime accumulation. The appointing authority shall compensate an employee granted leave under this section at the employee's regular rate of pay for those regular work hours during which the employee is absent from work. An employee deemed to be on leave under this section shall not be deemed to be an employee of the state for purposes of workers' compensation. An employee deemed to be on leave under this section shall not be deemed to be an employee of the state for purposes of the Iowa tort claims Act. Leave under this section shall be granted only for services relating to a disaster in the state of Iowa.

95 Acts, ch 132, §1
NEW section

70A.27 Reserved.

CHAPTER 73

PREFERENCES

73.7 Bids and contracts for coal. Repealed by 95 Acts, ch 71, § 3.

73.8 Name of producer and mine. Repealed by 95 Acts, ch 71, § 3.

73.9 Violations — remedy.

Any contract entered into or carried out in whole or in part, in violation of the provisions of section 73.6, shall be void and the contract or any claim growing

out of the sale, delivery, or use of the coal specified in the contract, shall be unenforceable in any court. In addition to any other proper party or parties, any unsuccessful bidder at a letting provided for in section 73.6 shall have the right to maintain an action in equity to prevent the violation of the terms of section 73.6.

95 Acts, ch 71, §1
Section amended

CHAPTER 80

DEPARTMENT OF PUBLIC SAFETY

80.9 Duties of department.

It shall be the duty of the department of public safety to prevent crime, to detect and apprehend criminals and to enforce such other laws as are hereinafter specified. The members of the department of public safety, except clerical workers therein, when authorized by the commissioner of public safety shall have and exercise all the powers of any peace officer of the state.

1. They shall not exercise their general powers within the limits of any city, except:

a. When so ordered by the direction of the governor;

b. When request is made by the mayor of any city, with the approval of the commissioner of public safety;

c. When request is made by the sheriff or county attorney of any county with the approval of the commissioner;

d. While in the pursuit of law violators or in investigating law violations;

e. While making any inspection provided by this chapter, or any additional inspection ordered by the commissioner;

f. When engaged in the investigating and enforcing of fire and arson laws;

g. When engaged in the investigation and enforcement of laws relating to narcotic, counterfeit, stimulant, and depressant drugs.

When any member of the department shall be acting in co-operation with any other local peace

officer, or county attorney in general criminal investigation work, or when acting on a special assignment by the commissioner, the member's jurisdiction shall be statewide.

However, the above limitations shall in no way be construed as a limitation as to their power as officers when a public offense is being committed in their presence.

2. In more particular, their duties shall be as follows:

a. To enforce all state laws.

b. To enforce all laws relating to traffic on the public highways of the state, including those relating to the safe and legal operation of passenger cars, motorcycles, motor trucks and buses; to see that proper safety rules are observed and to give first aid to the injured.

c. To investigate all fires; to apprehend persons suspected of arson; to enforce all safety measures in connection with the prevention of fires; and to disseminate fire-prevention education.

d. To collect and classify, and keep at all times available, complete information useful for the detection of crime, and the identification and apprehension of criminals. Such information shall be available for all peace officers within the state, under such regulations as the commissioner may prescribe. The provisions of chapter 141 do not apply to the entry of human immunodeficiency virus-related information by criminal or juvenile justice agencies, as defined in section 692.1, into the Iowa criminal justice information system or the national crime information center system. The provisions of chapter 141 also do not apply to the transmission of the same information from either or both information systems to criminal or juvenile justice agencies. The provisions of chapter 141 also do not apply to the transmission of the same information from either or both information systems to employees of state correctional institutions subject to the jurisdiction of the department of corrections, employees of secure facilities for juveniles subject to the jurisdiction of the department of human services, and employees of city and county jails, if those employees have direct physical supervision over inmates of those facilities or institutions. Human immunodeficiency virus-related information shall not be transmitted over the police radio broadcasting system under chapter 693 or any other radio-based communications system. An employee of an agency receiving human immunodeficiency virus-related information under this section who communicates the information to another employee who does not have direct physical supervision over inmates, other than to a supervisor of an employee who has direct physical supervision over inmates for the purpose of conveying the information to such an employee, or who communicates the information to any person not employed by the agency or uses the information outside the agency is guilty of a class "D" felony. The commissioner shall adopt rules regarding the transmission of human immunodeficiency virus-related information including provisions for maintaining

confidentiality of the information. The rules shall include a requirement that persons receiving information from the Iowa criminal justice information system or the national crime information center system receive training regarding confidentiality standards applicable to the information received from the system. The commissioner shall develop and establish, in cooperation with the department of corrections and the Iowa department of public health, training programs and program criteria for persons receiving human immunodeficiency virus-related information through the Iowa criminal justice information system or the national crime information center system.

e. To operate such radio broadcasting stations as may be necessary in order to disseminate information which will make possible the speedy apprehension of lawbreakers, as well as such other information as may be necessary in connection with the duties of this office.

f. Provide protection and security for persons and property on the grounds of the state capitol complex.

g. To assist persons who are responsible for the care of private and public land in identifying growing marijuana plants when the plants are reported to the department. The department shall also provide education to the persons regarding methods of eradicating the plants. The department shall adopt rules necessary to carry out this paragraph.

h. To maintain a vehicle theft unit in the Iowa highway safety patrol to investigate and assist in the examination and identification of stolen, altered, or forfeited vehicles.

3. They may administer oaths, acknowledge signatures, and take voluntary testimony pursuant to their duties as provided by law.

4. It is the intent of the general assembly that the commissioner of public safety shall reassign the arson investigators from the division of criminal investigation and bureau of identification of the department of public safety to the state fire marshal's office effective July 1, 1978 and the arson investigators shall be under the direct supervision of the state fire marshal.

95 Acts, ch 191, §2

Subsection 2, paragraph d amended

80.41 Highway safety patrol fund.

1. A highway safety patrol fund is created as a separate fund in the state treasury under the control of the department of revenue and finance. Interest and other moneys earned by the fund shall be deposited in the fund. The fund shall include moneys credited from the use tax as allocated under section 423.24, subsection 2.

2. Moneys credited to the fund shall be expended, pursuant to appropriations made from the fund by the general assembly, by the division of highway safety, uniformed force, and radio communications of the department of public safety for salaries, including salary adjustment moneys, support, maintenance, and miscellaneous purposes, including workers' com-

pensation expenses and the state's contribution to the peace officers' retirement, accident, and disability system provided in chapter 97A.

3. Notwithstanding section 8.33, moneys credited to the fund which remain unobligated or unexpended at the close of a fiscal year shall not revert to

the general fund of the state but shall be credited to the fund from which they were appropriated.

4. This section is repealed July 1, 2000.

95 Acts, ch 220, §23

For appropriations to the highway safety patrol fund for the 1996-1997 through 1999-2000 fiscal years, see 95 Acts, ch 220, §20

NEW section

CHAPTER 85

WORKERS' COMPENSATION

85.36 Basis of computation.

The basis of compensation shall be the weekly earnings of the injured employee at the time of the injury. Weekly earnings means gross salary, wages, or earnings of an employee to which such employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured, as regularly required by the employee's employer for the work or employment for which the employee was employed, computed or determined as follows and then rounded to the nearest dollar:

1. In the case of an employee who is paid on a weekly pay period basis, the weekly gross earnings.

2. In the case of an employee who is paid on a biweekly pay period basis, one-half of the biweekly gross earnings.

3. In the case of an employee who is paid on a semimonthly pay period basis, the semimonthly gross earnings multiplied by twenty-four and subsequently divided by fifty-two.

4. In the case of an employee who is paid on a monthly pay period basis, the monthly gross earnings multiplied by twelve and subsequently divided by fifty-two.

5. In the case of an employee who is paid on a yearly pay period basis, the weekly earnings shall be the yearly earnings divided by fifty-two.

6. In the case of an employee who is paid on a daily, or hourly basis, or by the output of the employee, the weekly earnings shall be computed by dividing by thirteen the earnings, not including overtime or premium pay, of said employee earned in the employ of the employer in the last completed period of thirteen consecutive calendar weeks immediately preceding the injury.

7. In the case of an employee who has been in the employ of the employer less than thirteen calendar weeks immediately preceding the injury, the employee's weekly earnings shall be computed under subsection 6, taking the earnings, not including overtime or premium pay, for such purpose to be the amount the employee would have earned had the employee been so employed by the employer the full thirteen calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation.

8. If at the time of the injury the hourly earnings have not been fixed or cannot be ascertained, the earnings for the purpose of calculating compensation

shall be taken to be the usual earnings for similar services where such services are rendered by paid employees.

9. If an employee earns either no wages or less than the usual weekly earnings of the regular full-time adult laborer in the line of industry in which the employee is injured in that locality, the weekly earnings shall be one-fiftieth of the total earnings which the employee has earned from all employment during the twelve calendar months immediately preceding the injury.

a. In computing the compensation to be allowed a volunteer fire fighter, emergency medical care provider, reserve peace officer, volunteer ambulance driver, or emergency medical technician trainee, the earnings as a fire fighter, emergency medical care provider, reserve peace officer, volunteer ambulance driver, or emergency medical technician trainee shall be disregarded and the volunteer fire fighter, emergency medical care provider, reserve peace officer, volunteer ambulance driver, or emergency medical technician trainee shall be paid an amount equal to the compensation the volunteer fire fighter, emergency medical care provider, reserve peace officer, volunteer ambulance driver, or emergency medical technician trainee would be paid if injured in the normal course of the volunteer fire fighter's, emergency medical care provider's, reserve peace officer's, volunteer ambulance driver's, or emergency medical technician trainee's regular employment or an amount equal to one hundred and forty percent of the statewide average weekly wage, whichever is greater.

b. If the employee was an apprentice or trainee when injured, and it is established under normal conditions the employee's earnings should be expected to increase during the period of disability, that fact may be considered in computing the employee's weekly earnings.

c. In computing the compensation to be paid to any employee who, before the accident for which the employee claims compensation, was disabled and drawing compensation under the provisions of this chapter, the compensation for each subsequent injury shall be apportioned according to the proportion of disability caused by the respective injuries which the employee shall have suffered.

Paragraph "c" of this subsection shall not apply to compensable injuries arising under the second injury compensation Act.

d. If the employee was an inmate as defined in section 85.59, the inmate's actual earnings shall be disregarded, and the weekly compensation rate shall be as set forth in section 85.59.

10. If a wage, or method of calculating a wage, is used for the basis of the payment of a workers' compensation insurance premium for a proprietor, partner, or officer of a corporation, the wage or the method of calculating the wage is determinative for purposes of computing the proprietor's, partner's, or officer's weekly workers' compensation benefit rate.

11. In computing the compensation to be allowed an elected or appointed official, the official may choose either of the following payment options:

a. The official shall be paid an amount of compensation based on the official's weekly earnings as an elected or appointed official.

b. The earnings of the official as an elected or appointed official shall be disregarded and the official shall be paid an amount equal to one hundred forty percent of the statewide average weekly wage.

95 Acts, ch 41, §2; 95 Acts, ch 140, §1, 2

See Code editor's note to §13B.8

Former subsection 9 stricken and former subsections 10-12 renumbered as 9-11

Subsection 9, paragraph a amended

85.61 Definitions.

In this and chapters 86 and 87, unless the context otherwise requires, the following definitions of terms shall prevail:

1. The word "court" wherever used in this and chapters 86 and 87, unless the context shows otherwise, shall be taken to mean the district court.

2. "Employer" includes and applies to a person, firm, association, or corporation, state, county, municipal corporation, school corporation, area education agency, township as an employer of volunteer fire fighters and emergency medical care providers only, benefited fire district, and the legal representatives of a deceased employer. "Employer" includes and applies to a rehabilitation facility approved for purchase-of-service contracts or for referrals by the department of human services or the department of education.

3. "Gross earnings" means recurring payments by employer to the employee for employment, before any authorized or lawfully required deduction or withholding of funds by the employer, excluding irregular bonuses, retroactive pay, overtime, penalty pay, reimbursement of expenses, expense allowances, and the employer's contribution for welfare benefits.

4. The words "injury" or "personal injury" shall be construed as follows:

a. They shall include death resulting from personal injury.

b. They shall not include a disease unless it shall result from the injury and they shall not include an occupational disease as defined in section 85A.8.

5. "Pay period" means that period of employment for which the employer customarily or regularly makes payments to employees for work performed or services rendered.

6. "Payroll taxes" means an amount, determined by tables adopted by the industrial commissioner pursuant to chapter 17A, equal to the sum of the following:

a. An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under the Internal Revenue Code, and regulations pursuant thereto, as amended, as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness and old age to which the employee is entitled on the date on which the employee was injured.

b. An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under chapter 422, and any rules pursuant thereto, as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness and old age to which the employee is entitled on the date on which the employee was injured.

c. An amount equal to the amount required on July 1 preceding the injury by the Social Security Act of 1935 as amended, to be deducted or withheld from the amount of earnings of the employee at the time of the injury as if the earnings were earned at the beginning of the calendar year in which the employee was injured.

7. The words "personal injury arising out of and in the course of the employment" shall include injuries to employees whose services are being performed on, in, or about the premises which are occupied, used, or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.

Personal injuries sustained by a volunteer fire fighter arise in the course of employment if the injuries are sustained at any time from the time the volunteer fire fighter is summoned to duty as a volunteer fire fighter until the time the volunteer fire fighter is discharged from duty by the chief of the volunteer fire department or the chief's designee.

Personal injuries sustained by emergency medical care providers as defined in section 147A.1 arise in the course of employment if the injuries are sustained at any time from the time the emergency medical care providers are summoned to duty until the time those duties have been fully discharged.

8. The words "reserve peace officer" shall mean a person defined as such by section 80D.1 who is not a full-time member of a paid law enforcement agency. A person performing such services shall not be classified as a casual employee.

9. "Spendable weekly earnings" is that amount remaining after payroll taxes are deducted from gross weekly earnings.

10. "Volunteer fire fighter" means any active member of an organized volunteer fire department in this state and any other person performing services as a volunteer fire fighter for a municipality, township or benefited fire district at the request of the

chief or other person in command of the fire department of the municipality, township or benefited fire district, or of any other officer of the municipality, township or benefited fire district having authority to demand such service, and who is not a full-time member of a paid fire department. A person performing such services shall not be classified as a casual employee.

11. “*Worker*” or “*employee*” means a person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship, for an employer; an executive officer elected or appointed and empowered under and in accordance with the charter and bylaws of a corporation, including a person holding an official position, or standing in a representative capacity of the employer; an official elected or appointed by the state, or a county, school district, area education agency, municipal corporation, or city under any form of government; a member of the Iowa highway safety patrol; a conservation officer; and a proprietor or partner who elects to be covered pursuant to section 85.1A, except as specified in this chapter.

“*Worker*” or “*employee*” includes an inmate as defined in section 85.59 and a person described in section 85.60.

“*Worker*” or “*employee*” includes an emergency medical care provider as defined in section 147A.1, a volunteer ambulance driver, or an emergency medical technician trainee, only if an agreement is reached between such worker or employee and the employer for whom the volunteer services are provided that workers’ compensation coverage under chapters 85, 85A, and 85B is to be provided by the employer. An emergency medical care provider who is a worker or employee under this paragraph is not a casual employee. “*Volunteer ambulance driver*” means a person performing services as a volunteer ambulance driver at the request of the person in charge of a fire department or ambulance service of a municipality. “*Emergency medical technician trainee*” means a person enrolled in and training for emergency medical technician certification.

“*Worker*” or “*employee*” includes a real estate agent who does not provide the services of an independent contractor. For the purposes of this paragraph a real estate agent is an independent contractor if the real estate agent is licensed by the Iowa real estate commission as a salesperson and both of the following apply:

a. Seventy-five percent or more of the remuneration, whether or not paid in cash, for the services performed by the individual as a real estate salesperson is derived from one company and is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

b. The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee with

respect to the services for state tax purposes.

12. The term “*worker*” or “*employee*” shall include the singular and plural. Any reference to a worker or employee who has been injured shall, when such worker or employee is dead, include the worker’s or employee’s dependents as herein defined or the worker’s or employee’s legal representatives; and where the worker or employee is a minor or incompetent, it shall include the minor’s or incompetent’s guardian, next friend, or trustee. Notwithstanding any law prohibiting the employment of minors all minor employees shall be entitled to the benefits of this chapter and chapters 86 and 87 regardless of the age of such minor employee.

13. The following persons shall not be deemed “*workers*” or “*employees*”:

a. A person whose employment is purely casual and not for the purpose of the employer’s trade or business except as otherwise provided in section 85.1.

b. An independent contractor.

c. An owner-operator who, as an individual or partner, or shareholder of a corporate owner-operator, owns a vehicle licensed and registered as a truck, road tractor, or truck tractor by a governmental agency, is an independent contractor while performing services in the operation of the owner-operator’s vehicle if all of the following conditions are substantially present:

(1) The owner-operator is responsible for the maintenance of the vehicle.

(2) The owner-operator bears the principal burden of the vehicle’s operating costs, including fuel, repairs, supplies, collision insurance, and personal expenses for the operator while on the road.

(3) The owner-operator is responsible for supplying the necessary personnel to operate the vehicle, and the personnel are considered the owner-operator’s employees.

(4) The owner-operator’s compensation is based on factors related to the work performed, including a percentage of any schedule of rates or lawfully published tariff, and not on the basis of the hours or time expended.

(5) The owner-operator determines the details and means of performing the services, in conformance with regulatory requirements, operating procedures of the carrier, and specifications of the shipper.

(6) The owner-operator enters into a contract which specifies the relationship to be that of an independent contractor and not that of an employee.

d. Directors of a corporation who are not at the same time employees of the corporation; or directors, trustees, officers, or other managing officials of a nonprofit corporation or association who are not at the same time full-time employees of the nonprofit corporation or association.

e. Proprietors and partners who have not elected to be covered by the workers’ compensation law of this state pursuant to section 85.1A.

95 Acts, ch 41, §3-5

Subsection 2 amended

Subsection 7, unnumbered paragraph 3 amended

Subsection 11, unnumbered paragraph 3 amended

CHAPTER 86

INDUSTRIAL SERVICES DIVISION

86.26 Judicial review.

Judicial review of decisions or orders of the industrial commissioner may be sought in accordance with chapter 17A. Notwithstanding chapter 17A, the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the hearing under section 86.17 was held and the industrial commissioner shall transmit to the reviewing court the original or a certified copy of

the entire record of the contested case which is the subject of the petition within thirty days after receiving written notice from the party filing the petition that a petition for judicial review has been filed. Such a review proceeding shall be accorded priority over other matters pending before the district court.

95 Acts, ch 140, §3
Section amended

CHAPTER 87

COMPENSATION LIABILITY INSURANCE

87.4 Group and self-insured plans — tax exemption — plan approval.

For the purpose of complying with this chapter, groups of employers by themselves or in an association with any or all of their workers, may form insurance associations as hereafter provided, subject to such reasonable conditions and restrictions as may be fixed by the insurance commissioner; and membership in such mutual insurance organization as approved, together with evidence of the payment of premiums due, shall be evidence of compliance with this chapter.

A self-insurance association formed under this section and an association comprised of cities or counties, or both, or community colleges, as defined in section 260C.2, which have entered into an agreement under chapter 28E for the purpose of establishing a self-insured program for the payment of workers' compensation benefits are exempt from taxation under section 432.1.

A plan shall be submitted to the commissioner of insurance for review and approval prior to its implementation. The commissioner shall adopt rules for the review and approval of a self-insured group plan provided under this section. The rules shall include, but are not limited to, the following:

1. Procedures for submitting a plan for approval including the establishment of a fee schedule to cover the costs of conducting the review.

2. Establishment of minimum financial standards to ensure the ability of the plan to adequately cover the reasonably anticipated expenses.

A self-insured program for the payment of workers' compensation benefits established by an association comprised of cities or counties, or both, or community colleges, as defined in section 260C.2, which have entered into an agreement under chapter 28E, is not insurance, and is not subject to regulation under chapters 505 through 523C. Membership in such an association together with payment of premiums due relieves the member from obtaining insurance as required in section 87.1. Such an association is not required to submit its plan or program to the commissioner of insurance for review and approval prior to its implementation and is not subject to rules or rates adopted by the commissioner relating to workers' compensation group self-insurance programs. Such a program is deemed to be in compliance with this chapter.

The workers' compensation premium written on a municipality which is a member of an insurance pool which provides workers' compensation insurance coverage to a statewide group of municipalities, as defined in section 670.1, shall not be considered in the determination of any assessments levied pursuant to an agreement established under section 515A.15.

95 Acts, ch 185, §1
NEW unnumbered paragraph 5

CHAPTER 91A

WAGE PAYMENT COLLECTION

91A.4 Employment suspension or termination — how wages are paid.

When the employment of an employee is suspended or terminated, the employer shall pay all wages earned, less any lawful deductions specified in section 91A.5 by the employee up to the time of the suspension or termination not later than the next regular payday for the pay period in which the wages were earned as provided in section 91A.3. However, if any of these wages are the difference between a credit paid against wages determined on a commis-

sion basis and the wages actually earned on a commission basis, the employer shall pay the difference not more than thirty days after the date of suspension or termination. If vacations are due an employee under an agreement with the employer or a policy of the employer establishing pro rata vacation accrued, the increment shall be in proportion to the fraction of the year which the employee was actually employed.

95 Acts, ch 37, §1
Section amended

CHAPTER 96

JOB SERVICE DIVISION — EMPLOYMENT SECURITY — UNEMPLOYMENT COMPENSATION

96.3 Payment — determination — duration — child support intercept.

1. *Payment.* Twenty-four months after the date when contributions first accrue under this chapter, benefits shall become payable from the fund; provided, that wages earned for services defined in section 96.19, subsection 18, paragraph “g” (3), irrespective of when performed, shall not be included for purposes of determining eligibility, under section 96.4 or full-time weekly wages, under subsection 4 of this section, for the purposes of any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on and after July 1, 1939, be payable under subsection 5 of this section on the basis of such wages. All benefits shall be paid through employment offices in accordance with such regulations as the division of job service of the department of employment services may prescribe.

2. *Total unemployment.* Each eligible individual who is totally unemployed in any week shall be paid with respect to such week benefits in an amount which shall be equal to the individual’s weekly benefit amount.

3. *Partial unemployment.* An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph “b”, and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual’s weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual’s weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

4. *Determination of benefits.* With respect to benefit years beginning on or after July 1, 1983, an eligible individual’s weekly benefit amount for a week of total unemployment shall be an amount equal to the following fractions of the individual’s total wages in insured work paid during that quarter

of the individual’s base period in which such total wages were highest; the commissioner shall determine annually a maximum weekly benefit amount equal to the following percentages, to vary with the number of dependents, of the statewide average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July:

If the number of dependents is:	The weekly benefit amount shall equal the following fraction of high quarter wages:	Subject to the following maximum percentage of the statewide average weekly wage:
0	1/23	53%
1	1/22	55%
2	1/21	57%
3	1/20	60%
4 or more	1/19	65%

The maximum weekly benefit amount, if not a multiple of one dollar shall be rounded to the lower multiple of one dollar. However, until such time as sixty-five percent of the statewide average weekly wage exceeds one hundred ninety dollars, the maximum weekly benefit amounts shall be determined using the statewide average weekly wage computed on the basis of wages reported for calendar year 1981. As used in this section “dependent” means dependent as defined in section 422.12, subsection 1, paragraph “c”, as if the individual claimant was a taxpayer, except that an individual claimant’s nonworking spouse shall be deemed to be a dependent under this section. “Nonworking spouse” means a spouse who does not earn more than one hundred twenty dollars in gross wages in one week.

5. *Duration of benefits.* The maximum total amount of benefits payable to an eligible individual

during a benefit year shall not exceed the total of the wage credits accrued to the individual's account during the individual's base period, or twenty-six times the individual's weekly benefit amount, whichever is the lesser. The commissioner shall maintain a separate account for each individual who earns wages in insured work. The commissioner shall compute wage credits for each individual by crediting the individual's account with one-third of the wages for insured work paid to the individual during the individual's base period. However, the commissioner shall recompute wage credits for an individual who is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, by crediting the individual's account with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period. Benefits paid to an eligible individual shall be charged against the base period wage credits in the individual's account which have not been previously charged, in the inverse chronological order as the wages on which the wage credits are based were paid. However if the state "off indicator" is in effect and if the individual is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, the maximum benefits payable shall be extended to thirty-nine times the individual's weekly benefit amount, but not to exceed the total of the wage credits accrued to the individual's account.

6. *Part-time workers.*

a. As used in this subsection the term "*part-time worker*" means an individual whose normal work is in an occupation in which the individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed.

b. The commissioner shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits.

7. *Recovery of overpayment of benefits.* If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The division of job service in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the division a sum equal to the overpayment.

If the division determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation

trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

8. *Back pay.* If an individual receives benefits for a period of unemployment and subsequently receives a payment for the same period from the individual's employer in the form of or in lieu of back pay, the benefits shall be recovered. The division of job service, in its discretion, may reach an agreement with the individual and the employer to allow the employer to deduct the amount of the benefits from the back pay and remit a sum equal to that amount to the unemployment compensation fund and the balance to the individual, or may recover the amount of the benefits either by having a sum equal to that amount deducted from any future benefits payable to the individual or by having the individual pay to the division a sum equal to that amount. If an agreement is reached to allow the employer to deduct the amount of benefits from the back pay and remit that amount to the fund, the division shall not charge that amount to the employer's account under section 96.7.

9. *Child support intercept.*

a. An individual filing a claim for benefits under section 96.6, subsection 1 shall, at the time of filing, disclose whether the individual owes a child support obligation which is being enforced by the child support recovery unit established in section 252B.2. If an individual discloses that such a child support obligation is owed and the individual is determined to be eligible for benefits under this chapter, the division of job service shall notify the child support recovery unit of the individual's disclosure and deduct and withhold from benefits payable to the individual the amount specified by the individual.

b. However, if the child support recovery unit and an individual owing a child support obligation reach an agreement to have specified amounts deducted and withheld from the individual's benefits and the child support recovery unit submits a copy of the agreement to the division, the division shall deduct and withhold the specified amounts.

c. However, if the division is notified of an assignment of income by the child support recovery unit under chapter 252D or section 598.22 or 598.23 or is garnished by the child support recovery unit under chapter 642 and an individual's benefits are condemned to the satisfaction of the child support obligation being enforced by the child support recovery unit, the division shall deduct and withhold from the individual's benefits that amount required through legal process.

Notwithstanding section 642.2, subsections 2, 3, 6, and 7 which restrict garnishments under chapter 642 to wages of public employees, the division may be garnished under chapter 642 by the child support recovery unit established in section 252B.2, pursuant to a judgment for child support against an individual eligible for benefits under this chapter.

Notwithstanding section 96.15, benefits under this chapter are not exempt from income assignment, garnishment, attachment, or execution if assigned to

or garnisheed by the child support recovery unit, established in section 252B.2, or if an assignment under section 598.22 or 598.23 is being enforced by the child support recovery unit to satisfy the child support obligation of an individual who is eligible for benefits under this chapter.

d. An amount deducted and withheld under paragraph "a", "b", or "c" shall be paid by the division to the child support recovery unit, and shall be treated as if it were paid to the individual as benefits under this chapter and as if it were paid by the individual to the child support recovery unit in satisfaction of the individual's child support obligations.

e. If an agreement for reimbursement has been made, the division shall be reimbursed by the child support recovery unit for the administrative costs incurred by the division under this section which are attributable to the enforcement of child support obligations by the child support recovery unit.

95 Acts, ch 23, §1; 95 Acts, ch 109, §1
 Subsection 7, unnumbered paragraph 2 amended
 Subsection 10 stricken

96.5 Causes for disqualification.

An individual shall be disqualified for benefits:

1. *Voluntary quitting.* If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the division of job service. But the individual shall not be disqualified if the division finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

b. Reserved.

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the division, provided the individual is otherwise eligible.

e. The individual left employment upon the advice of a licensed and practicing physician, for the sole purpose of taking a member of the individual's family to a place having a different climate, during which time the individual shall be deemed unavailable for work, and notwithstanding during such absence the individual secures temporary employment, and returned to the individual's regular employer and offered the individual's services and the individual's regular work or comparable work was not available, provided the individual is otherwise eligible.

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the division, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

h. The individual has left employment in lieu of exercising a right to bump or oust a fellow employee with less seniority or priority from the fellow employee's job.

i. The individual is unemployed as a result of the individual's employer selling or otherwise transferring a clearly segregable and identifiable part of the employer's business or enterprise to another employer which does not make an offer of suitable work to the individual as provided under subsection 3; however, if the individual does accept, and works in and is paid wages for, suitable work with the acquiring employer, the acquiring employer immediately becomes chargeable for the benefits paid which are based on the wages paid by the transferring employer.

2. *Discharge for misconduct.* If the division of job service finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

b. Provided further, if gross misconduct is established, the division shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

3. *Failure to accept work.* If the division of job service finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the division or to accept suitable work when offered that individual. The division shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the division on forms provided by the division. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the division shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the division finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(1) One hundred percent, if the work is offered during the first five weeks of unemployment.

(2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

4. *Labor disputes.* For any week with respect to which the division of job service finds that the individual's total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the division that:

a. The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

b. The individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

5. *Other compensation.* For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the

reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraphs "a", "b", or "c", were paid on a retroactive basis for the same period, or any part thereof, the division of job service shall recover the excess amount of benefits paid by the division for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual, otherwise qualified, from any of the benefits contemplated herein.

6. *Benefits from other state.* For any week with respect to which or a part of which an individual has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States, provided that if the appropriate agency of such other state or of the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

7. *Vacation pay.*

a. When an employer makes a payment or becomes obligated to make a payment to an individual for vacation pay, or for vacation pay allowance, or as pay in lieu of vacation, such payment or amount shall be deemed "wages" as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph "c" hereof.

b. When, in connection with a separation or layoff of an individual, the individual's employer makes a payment or payments to the individual, or becomes obligated to make a payment to the individual as, or in the nature of, vacation pay, or vacation pay allowance, or as pay in lieu of vacation, and within ten calendar days after notification of the filing of the individual's claim, designates by notice in writing to the division of job service the period to which the payment shall be allocated; provided, that if such designated period is extended by the employer, the individual may again similarly designate an extended period, by giving notice in writing to the division not later than the beginning of the extension of the period, with the same effect as if the period of extension were included in the original designation. The amount of a payment or obligation to make payment, is deemed "wages" as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph "c" of this subsection 7.

c. Of the wages described in paragraph "a" (whether or not the employer has designated the period therein described), or of the wages described

in paragraph "b", if the period therein described has been designated by the employer as therein provided, a sum equal to the wages of such individual for a normal workday shall be attributed to, or deemed to be payable to the individual with respect to, the first and each subsequent workday in such period until such amount so paid or owing is exhausted. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums, so designated or attributed to such normal workdays, equal or exceed the individual's weekly benefit amount. If the amount so designated or attributed as wages is less than the weekly benefit amount of such individual, the individual's benefits shall be reduced by such amount.

d. Notwithstanding contrary provisions in paragraphs "a", "b" and "c", if an individual is separated from employment and is scheduled to receive vacation payments during the period of unemployment attributable to the employer and if the employer does not designate the vacation period pursuant to paragraph "b", then payments made by the employer to the individual or an obligation to make a payment by the employer to the individual for vacation pay, vacation pay allowance or pay in lieu of vacation shall not be deemed wages as defined in section 96.19, subsection 41, for any period in excess of one week and such payments or the value of such obligations shall not be deducted for any period in excess of one week from the unemployment benefits the individual is otherwise entitled to receive under this chapter. However, if the employer designates more than one week as the vacation period pursuant to paragraph "b", the vacation pay, vacation pay allowance, or pay in lieu of vacation shall be considered wages and shall be deducted from benefits.

e. If an employer pays or is obligated to pay a bonus to an individual at the same time the employer pays or is obligated to pay vacation pay, a vacation pay allowance, or pay in lieu of vacation, the bonus shall not be deemed wages for purposes of determining benefit eligibility and amount, and the bonus shall not be deducted from unemployment benefits the individual is otherwise entitled to receive under this chapter.

8. *Administrative penalty.* If the division of job service finds that, with respect to any week of an insured worker's unemployment for which such person claims credit or benefits, such person has, within the thirty-six calendar months immediately preceding such week, with intent to defraud by obtaining any benefits not due under this chapter, willfully and knowingly made a false statement or misrepresentation, or willfully and knowingly failed to disclose a material fact; such person shall be disqualified for the week in which the division makes such determination, and forfeit all benefit rights under the unemployment compensation law for a period of not more than the remaining benefit period as determined by the division according to the circumstances of each case. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter.

9. *Athletes — disqualified.* Services performed by an individual, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons or similar periods, if such individual performs such services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such season or similar periods.

10. *Aliens — disqualified.* For services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence.

95 Acts, ch 109, §2
Subsection 1, paragraph a amended

96.6 Filing — determination — appeal.

1. *Filing.* Claims for benefits shall be made in accordance with such regulations as the division of job service may prescribe.

2. *Initial determination.* A representative designated by the commissioner shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5. However, the claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h", and subsection 10. Unless the claimant or other interested party, after notification or within ten calendar days after

notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

3. *Appeals.* Unless the appeal is withdrawn, an administrative law judge, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the representative. The hearing shall be conducted pursuant to the provisions of chapter 17A relating to hearings for contested cases. Before the hearing is scheduled, the parties shall be afforded the opportunity to choose either a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing. A telephone or in-person hearing shall not be scheduled before the seventh calendar day after the parties receive notice of the hearing. Reasonable requests for the postponement of a hearing shall be granted. The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons for the decision, which is the final decision of the division, unless within fifteen days after the date of notification or mailing of the decision, further appeal is initiated pursuant to this section.

Appeals from the initial determination shall be heard by an administrative law judge employed by the division of job service. An administrative law judge's decision may be appealed by any party to the employment appeal board created in section 10A.601. The decision of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court.

4. *Effect of determination.* A finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of the division, administrative law judge, or the employment appeal board, is binding only upon the parties to proceedings brought under this chapter, and is not binding upon any other proceedings or action involving the same facts brought by the same or related parties before the division of labor services, division of industrial services, other state agency, arbitrator, court, or judge of this state or the United States.

95 Acts, ch 109, §3
Subsection 2 amended

96.7 Employer contributions and reimbursements.

1. *Payment.* Contributions accrue and are payable, in accordance with rules adopted by the divi-

sion, on all taxable wages paid by an employer for insured work.

2. *Contribution rates based on benefit experience.*

a. (1) The division shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

(3) The amount of regular benefits charged against the account of an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based on employment with the employer during that quarter. The amount of extended benefits charged against the account of an employer for a calendar quarter of the base period shall not exceed an additional fifty percent of the amount of the individual's wage credits based on employment with the employer during that quarter. However, the amount of extended benefits charged against the account of a governmental entity which is either a reimbursable or contributory employer, for a calendar quarter of the base period shall not exceed an additional one hundred percent of the

amount of the individual's wage credits based on employment with the governmental entity during that quarter.

(4) The division shall adopt rules prescribing the manner in which benefits shall be charged against the accounts of several employers for which an individual performed employment during the same calendar quarter.

(5) This chapter shall not be construed to grant an employer or an individual in the employer's service, prior claim or right to the amount paid by the employer into the unemployment compensation fund either on the employer's own behalf or on behalf of the individual.

(6) Within forty days after the close of each calendar quarter, the division shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the division for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

b. If an enterprise or business, or a clearly segregable and identifiable part of an enterprise or business, for which contributions have been paid is sold or transferred to a subsequent employing unit, or if one or more employing units have been reorganized or merged into a single employing unit, and the successor employer, having qualified as an employer as defined in section 96.19, subsection 16, paragraph "b", continues to operate the enterprise or business, the successor employer shall assume the position of the predecessor employer or employers with respect to the predecessors' payrolls, contributions, accounts, and contribution rates to the same extent as if no change had taken place in the ownership or control of the enterprise or business. However, the successor employer shall not assume the position of the predecessor employer or employers with respect to the predecessor employer's or employers' payrolls, contributions, accounts, and contribution rates which are attributable to that part of the enterprise or business transferred, unless the successor employer applies to the division within sixty days from the date of the partial transfer, and the succession is approved by the predecessor employer or employers and the division.

The predecessor employer, prior to entering into a contract with a successor employer relating to the sale or transfer of the enterprise or business, or a clearly segregable and identifiable part of the enterprise or business, shall disclose to the successor employer the predecessor employer's record of charges of benefits payments and any layoffs or incidences since

the last record that would affect the experience record. A predecessor employer who fails to disclose or willfully discloses incorrect information to a successor employer regarding the predecessor employer's record of charges of benefits payments is liable to the successor employer for any actual damages and attorney fees incurred by the successor employer as a result of the predecessor employer's failure to disclose or disclosure of incorrect information. The division shall include notice of the requirement of disclosure in the division's quarterly notification given to each employer pursuant to paragraph "a", subparagraph (6).

The contribution rate to be assigned to the successor employer for the period beginning not earlier than the date of the succession and ending not later than the beginning of the next following rate year, shall be the contribution rate of the predecessor employer with respect to the period immediately preceding the date of the succession, provided the successor employer was not, prior to the succession, a subject employer, and only one predecessor employer, or only predecessor employers with identical rates, are involved. If the predecessor employers' rates are not identical and the successor employer is not a subject employer prior to the succession, the division shall assign the successor employer a rate for the remainder of the rate year by combining the experience of the predecessor employers. If the successor employer is a subject employer prior to the succession, the successor employer may elect to retain the employer's own rate for the remainder of the rate year, or the successor employer may apply to the division to have the employer's rate redetermined by combining the employer's experience with the experience of the predecessor employer or employers. However, if the successor employer is a subject employer prior to the succession and has had a partial transfer of the experience of the predecessor employer or employers approved, then the division shall recompute the successor employer's rate for the remainder of the rate year.

c. (1) A nonconstruction contributory employer newly subject to this chapter shall pay contributions at the rate specified in the twelfth benefit ratio rank but not less than one percent until the end of the calendar year in which the employer's account has been chargeable with benefits for twelve consecutive calendar quarters immediately preceding the computation date.

(2) A construction contributory employer, as defined under rules adopted by the division, which is newly subject to this chapter shall pay contributions at the rate specified in the twenty-first benefit ratio rank until the end of the calendar year in which the employer's account has been chargeable with benefits for twelve consecutive calendar quarters.

(3) Thereafter, the employer's contribution rate shall be determined in accordance with paragraph "d", except that the employer's average annual taxable payroll and benefit ratio may be computed, as determined by the division, for less than five periods

of four consecutive calendar quarters immediately preceding the computation date.

d. The division shall determine the contribution rate table to be in effect for the rate year following the computation date, by determining the ratio of the current reserve fund ratio to the highest benefit cost ratio on the computation date. On or before the fifth day of September the division shall make available to employers the contribution rate table to be in effect for the next rate year.

(1) The current reserve fund ratio is computed by dividing the total funds available for payment of benefits, on the computation date, by the total wages paid in covered employment excluding reimbursable employment wages during the first four calendar quarters of the five calendar quarters immediately preceding the computation date.

(2) The highest benefit cost ratio is the highest of the resulting ratios computed by dividing the total benefits paid, excluding reimbursable benefits paid, during each consecutive twelve-month period, during the ten-year period ending on the computation date, by the total wages, excluding reimbursable employment wages, paid in the four calendar quarters ending nearest and prior to the last day of such twelve-month period; however, the highest benefit cost ratio shall not be less than .02.

If the current reserve fund ratio, divided by the highest benefit cost ratio:

Equals or exceeds	But is less than	The contribution rate table in effect shall be
—	0.3	1
0.3	0.5	2
0.5	0.7	3
0.7	0.85	4
0.85	1.0	5
1.0	1.15	6
1.15	1.30	7
1.30	—	8

"Benefit ratio" means a number computed to six decimal places on July 1 of each year obtained by dividing the average of all benefits charged to an employer during the five periods of four consecutive calendar quarters immediately preceding the computation date by the employer's average annual taxable payroll.

Each employer qualified for an experience rating shall be assigned a contribution rate for each rate year that corresponds to the employer's benefit ratio rank in the contribution rate table effective for the rate year from the following contribution rate tables. Each employer's benefit ratio rank shall be computed by listing all the employers by increasing benefit ratios, from the lowest benefit ratio to the highest benefit ratio and grouping the employers so listed into twenty-one separate ranks containing as nearly as possible four and seventy-six hundredths percent of the total taxable wages, excluding reimbursable employment wages, paid in covered employment dur-

ing the four completed calendar quarters immediately preceding the computation date. If an employer's taxable wages qualify the employer for two separate benefit ratio ranks the employer shall be

afforded the benefit ratio rank assigned the lower contribution rate. Employers with identical benefit ratios shall be assigned to the same benefit ratio rank.

Benefit Ratio Rank	Approximate Cumulative Taxable Payroll Limit	Contribution Rate Tables							
		1	2	3	4	5	6	7	8
1	4.8%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2	9.5%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
3	14.3%	0.1	0.1	0.1	0.1	0.1	0.0	0.0	0.0
4	19.0%	0.4	0.3	0.3	0.2	0.1	0.1	0.1	0.1
5	23.8%	0.6	0.5	0.4	0.3	0.3	0.2	0.1	0.1
6	28.6%	0.9	0.8	0.6	0.5	0.4	0.3	0.2	0.1
7	33.3%	1.2	1.0	0.8	0.6	0.5	0.4	0.3	0.2
8	38.1%	1.5	1.3	1.0	0.8	0.6	0.5	0.3	0.2
9	42.8%	1.9	1.5	1.2	0.9	0.7	0.6	0.4	0.3
10	47.6%	2.1	1.8	1.4	1.1	0.8	0.6	0.5	0.3
11	52.4%	2.5	2.0	1.6	1.3	1.0	0.7	0.5	0.3
12	57.1%	3.0	2.4	1.9	1.5	1.1	0.9	0.6	0.4
13	61.9%	3.6	2.9	2.4	1.8	1.4	1.1	0.8	0.5
14	66.6%	4.4	3.6	2.9	2.2	1.7	1.3	1.0	0.6
15	71.4%	5.3	4.3	3.5	2.7	2.0	1.6	1.1	0.7
16	76.2%	6.3	5.2	4.1	3.2	2.4	1.9	1.4	0.9
17	80.9%	7.0	6.4	5.2	4.0	3.0	2.3	1.7	1.1
18	85.7%	7.5	7.5	7.0	5.4	4.1	3.1	2.3	1.5
19	90.4%	8.0	8.0	8.0	7.3	5.6	4.2	3.1	2.0
20	95.2%	8.5	8.5	8.5	8.0	7.6	5.8	4.3	2.8
21	100.0%	9.0	9.0	9.0	9.0	8.5	8.0	7.5	7.0

e. The division shall fix the contribution rate for each employer and notify the employer of the rate. An employer may appeal to the division for a revision of the contribution rate within thirty days from the date of the notice to the employer. After providing an opportunity for a hearing, the division may affirm, set aside, or modify its former determination and may grant the employer a new contribution rate. The division shall notify the employer of its decision by regular mail. Judicial review of action of the division may be sought pursuant to chapter 17A.

If an employer's account has been charged with benefits as the result of a decision allowing benefits and the decision is reversed, the employer may appeal, within thirty days from the date of the next contribution rate notice, for a recomputation of the rate. If a base period employer's account has been charged with benefits paid to an employee at a time when the employee was employed by the base period employer in the same employment as in the base period, the employer may appeal, within thirty days from the date of the first notice of the employer's contribution rate which is based on the charges, for a recomputation of the rate.

f. If an employer has not filed a contribution and payroll quarterly report, as required pursuant to section 96.11, subsection 7, for a calendar quarter which precedes the computation date and upon which the employer's rate of contribution is computed, the employer's average annual taxable payroll shall be computed by considering the delinquent quarterly reports as containing zero taxable wages.

If a delinquent quarterly report is received by September 30 following the computation date the contribution rate shall be recomputed by using the taxable wages in all the appropriate quarterly reports on file to determine the average annual taxable payroll.

If a delinquent quarterly report is received after September 30 following the computation date the contribution rate shall not be recomputed, unless the rate is appealed in writing to the division under paragraph "e" and the delinquent quarterly report is also submitted not later than thirty days after the division notifies the employer of the rate under paragraph "e".

3. *Determination and assessment of contributions.*

a. As soon as practicable and in any event within two years after an employer has filed reports, as required pursuant to section 96.11, subsection 7, the division shall examine the reports and determine the correct amount of contributions due, and the amount so determined by the division shall be the contributions payable. If the contributions found due are greater than the amount paid, the division shall send a notice by certified mail to the employer with respect to the additional contributions and interest assessed. A lien shall attach as provided in section 96.14, subsection 3, if the assessment is not paid or appealed within thirty days of the date of the notice of assessment.

b. If the division discovers from the examination of the reports required pursuant to section 96.11, subsection 7 or in some other manner that wages, or any portion of wages, payable for employment, have not been listed in the reports, or that reports were not filed when due, or that reports have been filed showing contributions due but contributions in fact have not been paid, the division shall at any time within five years after the time the reports were due, determine the correct amount of contributions payable, together with interest and any applicable penalty as provided in this chapter. The division shall send a notice by certified mail to the employer of the amount assessed and a lien shall attach as provided in paragraph "a".

c. The certificate of the division to the effect that contributions have not been paid, that reports have not been filed, or that information has not been furnished as required under the provisions of this chapter, is prima facie evidence of the failure to pay contributions, file reports, or furnish information.

4. *Employer liability determination.* The division shall initially determine all questions relating to the liability of an employing unit or employer, including the amount of contribution, the contribution rate, and successorship. A copy of the initial determination shall be sent by regular mail to the last address, according to the records of the division, of each affected employing unit or employer.

The affected employing unit or employer may appeal in writing to the division from the initial determination. An appeal shall not be entertained for any reason by the division unless the appeal is filed with the division within thirty days from the date on which the initial determination is mailed. If an appeal is not so filed, the initial determination shall with the expiration of the appeal period become final and conclusive in all respects and for all purposes.

A hearing on an appeal shall be conducted according to rules adopted by the division. A copy of the decision of the administrative law judge shall be sent by regular mail to the last address, according to the records of the division, of each affected employing unit or employer.

The division's decision on the appeal shall be final and conclusive as to the liability of the employing unit or employer unless the employing unit or employer files an appeal for judicial review within thirty

days after the date of mailing of the decision as provided in subsection 5.

5. *Judicial review.* Notwithstanding chapter 17A, petitions for judicial review may be filed in the district court of the county in which the employer resides, or in which the employer's principal place of business is located, or in the case of a nonresident not maintaining a place of business in this state either in a county in which the wages payable for employment were earned or paid or in Polk county, within thirty days after the date of the notice to the employer of the division's final determination as provided for in subsection 2, 3, or 4.

The petitioner shall file with the clerk of the district court a bond for the use of the respondent, with sureties approved by the clerk, with any penalty to be fixed and approved by the clerk. The bond shall not be less than fifty dollars and shall be conditioned on the petitioner's performance of the orders of the court. In all other respects, the judicial review shall be in accordance with chapter 17A.

6. *Jeopardy assessments.* If the division believes that the collection of contributions payable or benefits reimbursable will be jeopardized by delay, the division may immediately make an assessment of the estimated amount of contributions due or benefits reimbursable, together with interest and applicable penalty, and demand payment from the employer. If the payment is not made, the division may immediately file a lien against the employer which may be followed by the issuance of a distress warrant.

The division shall be permitted to accept a bond from the employer to satisfy collection until the amount of contributions due is determined. The bond shall be in an amount deemed necessary, but not more than double the amount of the contributions involved, with securities satisfactory to the division.

7. *Financing benefits paid to employees of governmental entities.*

a. A governmental entity which is an employer under this chapter shall pay benefits in a manner provided for a reimbursable employer unless the governmental entity elects to make contributions as a contributory employer. The election shall be effective for a minimum of one calendar year and may be changed if an election is made to become a reimbursable employer prior to December 1 for a minimum of the following calendar year.

However, if on the effective date of the election the governmental entity has a negative balance in its contributory account, the governmental entity shall pay to the fund within a time period determined by the division the amount of the negative balance and shall immediately become liable to reimburse the unemployment compensation fund for benefits paid in lieu of contributions. Regular or extended benefits paid after the effective date of the election, including those based on wages paid while the governmental entity was a contributory employer, shall be billed to the governmental entity as a reimbursable employer.

b. A governmental entity electing to make contributions as a contributory employer, with at least

eight consecutive calendar quarters immediately preceding the computation date throughout which the employer's account has been chargeable with benefits, shall be assigned a contribution rate under this paragraph. Contribution rates shall be assigned by listing all governmental contributory employers by decreasing percentages of excess from the highest positive percentage of excess to the highest negative percentage of excess. The employers so listed shall be grouped into seven separate percentage of excess ranks each containing as nearly as possible one-seventh of the total taxable wages of governmental entities eligible to be assigned a rate under this paragraph.

As used in this subsection, "percentage of excess" means a number computed to six decimal places on July 1 of each year obtained by dividing the excess of all contributions attributable to an employer over the sum of all benefits charged to an employer by the employer's average annual payroll. An employer's percentage of excess is a positive number when the total of all contributions paid to an employer's account for all past periods to and including those for the quarter immediately preceding the rate computation date exceeds the total benefits charged to such account for the same period. An employer's percentage of excess is a negative number when the total of all contributions paid to an employer's account for all past periods to and including those for the quarter immediately preceding the rate computation date is less than the total benefits charged to such account for the same period.

As used in this subsection, "average annual taxable payroll" means the average of the total amount of taxable wages paid by an employer for insured work during the three periods of four consecutive calendar quarters immediately preceding the computation date. However, for an employer which qualifies on any computation date for a computed rate on the basis of less than twelve consecutive calendar quarters of chargeability immediately preceding the computation date, "average annual taxable payroll" means the average of the employer's total amount of taxable wages for the two periods of four consecutive calendar quarters immediately preceding the computation date.

The division shall annually calculate a base rate for each calendar year. The base rate is equal to the sum of the benefits charged to governmental contributory employers in the calendar year immediately preceding the computation date plus or minus the difference between the total benefits and contributions paid by governmental contributory employers since January 1, 1980, which sum is divided by the total taxable wages reported by governmental contributory employers during the calendar year immediately preceding the computation date, rounded to the next highest one-tenth of one percent. Excess contributions from the years 1978 and 1979 shall be used to offset benefits paid in any calendar year where total benefits exceed total contributions of governmental contributory employers. The contribu-

tion rate as a percentage of taxable wages of the employer shall be assigned as follows:

If the percentage of excess rank is:	The contribution rate shall be:	Approximate cumulative taxable payroll
1	Base Rate -0.9	14.3
2	Base Rate -0.6	28.6
3	Base Rate -0.3	42.9
4	Base Rate	57.2
5	Base Rate +0.3	71.5
6	Base Rate +0.6	85.8
7	Base Rate +0.9	100.0

If a governmental contributory employer is grouped into two separate percentage of excess ranks, the employer shall be assigned the lower contribution rate of the two percentage of excess ranks. Notwithstanding the provisions of this paragraph, a governmental contributory employer shall not be assigned a contribution rate less than one-tenth of one percent of taxable wages unless the employer has a positive percentage of excess greater than five percent.

Governmental entities electing to be contributory employers which are not eligible to be assigned a contribution rate under this paragraph shall be assigned the base rate as a contribution rate for the calendar year.

c. For the purposes of this subsection, "governmental reimbursable employer" means an employer which makes payments to the division for the unemployment compensation fund in an amount equal to the regular and extended benefits paid, which are based on wages paid for service in the employ of the employer. Benefits paid to an eligible individual shall be charged against the base period employers in the inverse chronological order in which the employment of the individual occurred. However, the amount of benefits charged against an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based upon employment with that employer during that quarter. At the end of each calendar quarter, the division shall bill each governmental reimbursable employer for benefits paid during that quarter. Payments by a governmental reimbursable employer shall be made in accordance with subsection 8, paragraph "b", subparagraphs (2) through (5).

d. A state agency, board, commission, or department, except a state board of regents' institution, shall, after approval of the billing for a governmental reimbursable employer as provided in subsection 8, paragraph "b", submit the billing to the director of revenue and finance. The director of revenue and finance shall pay the approved billing out of any funds in the state treasury not otherwise appropriated. A state agency, board, commission, or department shall reimburse the director of revenue and finance out of any revolving, special, trust, or federal fund from which all or a portion of the billing can be

paid, for payments made by the director of revenue and finance on behalf of the agency, board, commission, or department.

e. If an enterprise or business of a reimbursable government entity is sold or otherwise transferred to a subsequent employing unit and the successor employing unit continues to operate the enterprise or business, the successor employing unit shall assume the position of the reimbursable government entity with respect to the reimbursable government entity's payroll and reimbursable benefits to the same extent as if no change in the ownership or control of the enterprise or business had occurred, whether or not the successor employer elected or elects, or was or is eligible to elect, to become a reimbursable employer with respect to the employer's payroll prior to the sale or transfer of the enterprise or business.

f. If a reimbursable instrumentality of the state or of a political subdivision is discontinued other than by sale or transfer to a subsequent employing unit as described in paragraph "e", the state or the political subdivision, respectively, shall reimburse the division of job service for benefits paid to former employees of the instrumentality after the instrumentality is discontinued.

8. Financing benefits paid to employees of nonprofit organizations.

a. A nonprofit organization which is, or becomes, subject to this chapter, shall pay contributions under subsections 1 and 2, unless the nonprofit organization elects, in accordance with this paragraph, to reimburse the unemployment compensation fund for benefits paid in an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, which are based on wages paid for service in the employ of the nonprofit organization during the effective period of the election.

(1) A nonprofit organization may elect to become a reimbursable employer for a period of not less than two calendar years by filing with the division a written notice of its election not later than thirty days prior to the beginning of the calendar year for which the election is to be effective.

(2) A nonprofit organization which makes an election in accordance with subparagraph (1) shall continue to be a reimbursable employer until the nonprofit organization files with the division a written notice terminating its election not later than thirty days prior to the beginning of the calendar year for which the termination is to be effective.

(3) The division may for good cause extend the period within which a notice of election or termination of election must be filed and may permit an election or termination of election to be retroactive.

(4) The division, in accordance with rules, shall notify each nonprofit organization of any determination made by the division of the status of the nonprofit organization as an employer and of the effective date of any election or termination of election. A determination is subject to appeal and review in accordance with subsections 4 and 5.

b. Reimbursements for benefits paid in lieu of contributions shall be made in accordance with the following:

(1) At the end of each calendar quarter, the division shall bill each nonprofit organization which has elected to reimburse the unemployment compensation fund for benefits paid in an amount equal to the full amount of regular benefits and one-half of the amount of extended benefits paid during the quarter which are based on wages paid for service in the employ of the organization. Benefits paid to an individual shall be charged against the base period employers in the inverse chronological order in which the employment of the individual occurred. However, the amount of benefits charged against an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based upon employment with that employer during that quarter.

(2) The nonprofit organization shall pay the bill not later than thirty days after the bill was mailed or otherwise delivered to the last known address of the nonprofit organization, unless the nonprofit organization has filed an application for redetermination in accordance with subparagraph (4).

(3) Reimbursements made by a nonprofit organization shall not be deducted, in whole or in part, from the wages of individuals in the employ of the nonprofit organization.

(4) The amount due specified in a bill from the division is conclusive unless, not later than fifteen days following the date the bill was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an application for redetermination with the division setting forth the grounds for the application. The division shall promptly review the amount due specified in the bill and shall issue a redetermination. The redetermination is conclusive on the nonprofit organization unless, not later than thirty days after the redetermination was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an appeal to the district court pursuant to subsection 5.

(5) The provisions for collection of contributions under section 96.14 are applicable to reimbursements for benefits paid in lieu of contributions.

(6) If an enterprise or business of a reimbursable nonprofit organization is sold or otherwise transferred to a subsequent employing unit and the successor employing unit continues to operate the enterprise or business, the successor employing unit shall assume the position of the reimbursable nonprofit organization with respect to the nonprofit organization's payroll and reimbursable benefits to the same extent as if no change in the ownership or control of the enterprise or business had occurred, whether or not the successor employer elected or elects, or was or is eligible to elect, to become a reimbursable employer with respect to the employer's payroll prior to the sale or transfer of the enterprise or business.

9. Reserved.

10. *Group accounts.* Two or more nonprofit organizations or two or more governmental entities which have become reimbursable employers in accordance with subsection 7 or subsection 8, paragraph "a", may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid which are attributable to service in the employ of the employers. The application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection. Upon approval of the application, the division shall establish a group account for the employers effective as of the beginning of the calendar quarter in which the division receives the application and shall notify the group's agent of the effective date of the account. The account shall remain in effect for not less than one year until terminated at the discretion of the division or upon application by the group. Upon establishment of the account, each employer member of the group shall be liable for benefit reimbursements in lieu of contributions with respect to each calendar quarter in an amount which bears the same ratio to the total benefits paid in the quarter which are attributable to service performed in the employ of all members of the group, as the total wages paid for service performed in the employ of the member in the quarter bear to the total wages paid for service performed in the employ of all members of the group in the quarter. The division shall adopt rules with respect to applications for establishment, maintenance, and termination of group accounts, for addition of new members to, and withdrawal of active members from group accounts, and for the determination of the amounts which are payable by members of the group and the time and manner of the payments.

11. *Temporary emergency surcharge.* If on the first day of the third month in any calendar quarter, the division has an outstanding balance of interest accrued on advance moneys received from the federal government for the payment of unemployment compensation benefits, or is projected to have an outstanding balance of accruing federal interest for that calendar quarter, the division shall collect a uniform temporary emergency surcharge for that calendar quarter, retroactive to the beginning of that calendar quarter. The surcharge shall be a percentage of employer contribution rates and shall be set at a uniform percentage, for all employers subject to the surcharge, necessary to pay the interest accrued on the moneys advanced to the division by the federal government, and to pay any additional federal interest which will accrue for the remainder of that calendar quarter. The surcharge shall apply to all employers except governmental entities, nonprofit organizations, and employers assigned a zero contribution rate. The division shall adopt rules prescribing the manner in which the surcharge will be collected. Interest shall accrue on all unpaid sur-

charges under this subsection at the same rate as on regular contributions and shall be collectible in the same manner. The surcharge shall not affect the computation of regular contributions under this chapter.

A special fund to be known as the temporary emergency surcharge fund is created in the state treasury. The special fund is separate and distinct from the unemployment compensation fund. All contributions collected from the temporary emergency surcharge shall be deposited in the special fund. The special fund shall be used only to pay interest accruing on advance moneys received from the federal government for the payment of unemployment compensation benefits. Interest earned upon moneys in the special fund shall be deposited in and credited to the special fund.

If the division determines on June 1 that no outstanding balance of interest due has accrued on advanced moneys received from the federal government for the payment of unemployment compensation benefits, and that no outstanding balance is projected to accrue for the remainder of the calendar year, the division shall notify the treasurer of state of its determination. The treasurer of state shall immediately transfer all moneys, including accrued interest, in the temporary emergency surcharge fund to the unemployment compensation fund for the payment of benefits.

12. *Administrative contribution surcharge — fund.*

a. An employer other than a governmental entity or a nonprofit organization, subject to this chapter, shall pay an administrative contribution surcharge equal in amount to one-tenth of one percent of federal taxable wages, as defined in section 96.19, subsection 37, paragraph "b". The division shall recompute the amount as a percentage of taxable wages, as defined in section 96.19, subsection 37, and shall add the percentage surcharge to the employer's contribution rate determined under this section. The division shall adopt rules prescribing the manner in which the surcharge will be collected. Interest shall accrue on all unpaid surcharges under this subsection at the same rate as on regular contributions and shall be collectible in the same manner.

b. A special fund to be known as the administrative contribution surcharge fund is created in the state treasury. The fund is separate and distinct from the unemployment compensation fund. All contributions collected from the administrative contribution surcharge shall be deposited in the fund. Interest earned upon moneys in the fund shall be deposited in and credited to the fund.

c. Moneys in the fund shall be used by the division only upon appropriation by the general assembly and only for personnel and nonpersonnel costs of rural and satellite job service offices in population centers of less than twenty thousand or for the division-approved training fund funded in section 8, subsection 2, of 1988 Iowa Acts, chapter 1274.

d. This subsection is repealed July 1, 1998, and the repeal is applicable to contribution rates for calendar year 1999 and subsequent calendar years.

95 Acts, ch 109, §4, 5

Subsection 2, paragraph a, subparagraph (2), unnumbered paragraph 3 amended

Subsection 2, paragraph a, subparagraph (2), unnumbered paragraph 4 stricken

96.19 Definitions.

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

1. *"Appeal board"* means the employment appeal board created under section 10A.601.

2. *"Average annual taxable payroll"* means the average of the total amount of taxable wages paid by an employer for insured work during the five periods of four consecutive calendar quarters immediately preceding the computation date.

3. *"Base period"* means the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim.

4. *"Benefit year"*. The term *"benefit year"* means a period of one year beginning with the day with respect to which an individual filed a valid claim for benefits. Any claim for benefits made in accordance with section 96.6, subsection 1, shall be deemed to be a valid claim for the purposes of this subsection if the individual has been paid wages for insured work required under the provisions of this chapter.

5. *"Benefits"* means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

6. *"Calendar quarter"* means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, excluding, however, any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof as the division of job service may by regulation prescribe.

7. *"Commissioner"* means the job service commissioner of the division of job service of the department of employment services appointed pursuant to section 96.10.

8. *"Computation date"*. The computation date for contribution rates shall be July 1 of that calendar year preceding the calendar year with respect to which such rates are to be effective.

9. *"Contributions"* means the money payments to the state unemployment compensation fund required by this chapter.

10. Reserved.

11. *"Department"* means the department of employment services created in section 84A.1.

12. *"Division"* means the division of job service of the department of employment services created in section 84A.1.

13. *"Domestic service"* includes service for an employing unit in the operation and maintenance of a

private household, local college club or local chapter of a college fraternity or sorority as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise or vocation.

14. *"Educational institution"* means one in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher. It is approved, licensed or issued a permit to operate as a school by the department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school. The course of study or training which it offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation.

15. *"Eligibility period"* of an individual means the period consisting of the weeks in the individual's benefit year which begin in an extended benefit period and, if the individual's benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

16. *"Employer"* means:

a. For purposes of this chapter with respect to any calendar year after December 31, 1971, any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars or more excluding wages paid for domestic service or for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, had in employment at least one individual irrespective of whether the same individual was in employment in each such day. An employing unit treated as a domestic service employer shall not be treated as an employer with respect to wages paid for service other than domestic service unless such employing unit is treated as an employer under this paragraph or as an agricultural labor employer.

b. Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade, or business, or substantially all of the assets thereof, of another employing unit which at the time of such acquisition was an employer subject to this chapter, or which acquired a part of the organization, trade, or business of another employing unit which at the time of such acquisition was an employer subject to this chapter. Provided, that such other employing unit would have been an employer under paragraph "a" of this subsection, if such part had constituted its entire organization, trade, or business.

c. Any employing unit which acquired the organization, trade, or business, or substantially all the assets of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph "a" of this subsection.

d. Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing unit, would be an employer under paragraph "a" of this subsection.

e. Any employing unit which, having become an employer under paragraph "a", "b", "c", "d", "f", "g", "h" or "i" has not, under section 96.8, ceased to be an employer subject to this chapter.

f. For the effective period of its election pursuant to section 96.8, subsection 3, any other employing unit which has elected to become fully subject to this chapter.

g. Any employing unit not an employer by reason of any other paragraph of this subsection for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or which, as a condition for approval of this chapter for full tax credit against the tax imposed by the federal Unemployment Tax Act (26 U.S.C. 3301-3308), is required, pursuant to such Act, to be an "employer" under this chapter. Provided, however, that if an employer subject to contributions solely because of the terms of this subsection shall establish proper proof to the satisfaction of the department that the employer's employees have been and will be duly covered and insured under the unemployment compensation law of another jurisdiction such employer shall not be deemed an employer and such services shall not be deemed employment under this chapter.

h. After December 31, 1971, this state or a state instrumentality and after December 31, 1977, a government entity unless specifically excluded from the definition of employment.

i. Any employing unit for which service in employment, as defined in subsection 18, paragraph "a", subparagraph (5), is performed after December 31, 1971.

j. For purposes of paragraphs "a" and "i", employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an election under an arrangement entered into in accordance with subsection 18, paragraph "d", by the division of job service and an agency charged with the administration of any other state or federal unemployment compensation law.

k. For purposes of paragraphs "a" and "i", if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week.

l. An employing unit employing agricultural labor after December 31, 1977, if the employing unit:

(1) Paid during any calendar quarter in the calendar year or the preceding calendar year wages of twenty thousand dollars or more for agricultural labor, or

(2) Employed on each of some twenty days during the calendar year or during the preceding calendar year, each day being in a different calendar week, at least ten individuals in employment in agricultural labor for some portion of the day.

m. An employing unit employing after December 31, 1977, domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, and with respect to any calendar year, any employing unit who during any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of one thousand dollars or more for such service.

17. "Employing unit" means any individual or type of organization, including this state and its political subdivisions, state agencies, boards, commissions, and instrumentalities thereof, any partnership, association, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any work which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of subsection 16 or section 96.8, subsection 3, the employing unit shall for all the purposes of this chapter be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such work; except that each such contractor or subcontractor who is an employer by reason of subsection 16 or section 96.8, subsection 3, shall alone be liable for the contributions measured by wages payable to individuals in the contractor's or subcontractor's employ, and except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of subsection 16 or section 96.8, subsection 3, may recover the same from such contractor or subcontractor, except as any contractor or subcontractor who would in the absence of the foregoing provisions be liable to pay said contributions, accepts exclusive liability for said contributions under an agreement with such employer made pursuant to general rules of the division of job service. Each individual employed to perform or to assist in performing the work of any agent or employee of an employ-

ing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of such work, and provided, further, that such employment was for a total of not less than eight hours in any one calendar week.

18. "Employment".

a. Except as otherwise provided in this subsection "employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Employment also means any service performed prior to January 1, 1978, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1977, by:

(1) Any officer of a corporation. Provided that the term "employment" shall not include such officer if the officer is a majority stockholder and the officer shall not be considered an employee of the corporation unless such services are subject to a tax to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or such services are required to be covered under this chapter of the Code, as a condition to receipt of a full tax credit against the tax imposed by the federal Unemployment Tax Act (26 U.S.C. § 3301-3309), or

(2) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee, or

(3) Any individual other than an individual who is an employee under subparagraphs (1) or (2) who performs services for remuneration for any person as an agent driver or commission driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry cleaning services for the individual's principal; as a traveling or city salesperson, other than as an agent driver or commission driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, the individual's principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

Provided, that for purposes of paragraph "a", subparagraph (3), the term "employment" shall include services performed after December 31, 1971, only if:

(a) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(b) The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

(c) The services are not in the nature of single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(4) Service performed after December 31, 1971, by an individual in the employ of this state or any of its wholly owned instrumentalities and after December 31, 1977, service performed by an individual in the employ of a government entity unless specifically excluded from the definition of employment for a government entity.

(5) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational or other organization, but only if the service is excluded from "employment" as defined in the federal Unemployment Tax Act (26 U.S.C. § 3301-3309) solely by reason of section 3306(c)(8) of that Act.

(6) For the purposes of subparagraphs (4) and (5), the term "employment" does not apply to service performed:

(a) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.

(b) By a duly ordained, commissioned, or licensed minister of a church in the exercise of that ministry or by a member of a religious order in the exercise of duties required by such order.

(c) In the employ of a nonpublic school which is not an institution of higher education prior to January 1, 1978.

(d) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work.

(e) As part of an unemployment work relief or work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(f) Prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution.

(g) In the employ of a governmental entity, if such service is performed by an individual in the exercise of the individual's duties as an elected official; as a member of a legislative body, or a member of the judiciary, of a state or political subdivision; as a member of the state national guard or air national guard; as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar

emergency; or in a position which, pursuant to the state law, is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position which ordinarily does not require duties of more than eight hours per week.

(7) (a) A person in agricultural labor when such labor is performed for an employing unit which during any calendar quarter in the calendar year or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor excluding labor performed before January 1, 1980, by an alien referred to in this subparagraph; or on each of some twenty days during the calendar year or the preceding calendar year, each day being in a different calendar week, employed in agricultural labor for some portion of the day ten or more individuals, excluding labor performed before January 1, 1980, by an alien referred to in this subparagraph; and such labor is not agricultural labor performed before January 1, 1980, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1184(c), 1101(a)(15)(H) (1976).

(b) For purposes of this subparagraph, any individual who is a member of a crew furnished by a crew leader to perform agricultural labor for any other employing unit shall be treated as an employee of such crew leader if such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and if such individual is not otherwise in employment as defined in this subsection.

For purposes of this subparagraph, in the case of any individual who is furnished by a crew leader to perform agricultural labor for any other employing unit and who is not treated as an employee of such crew leader as described above, such other employing unit and not the crew leader shall be treated as the employer of such individual; and such other employing unit shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader either on the crew leader's behalf or on behalf of such other employing unit for the agricultural labor performed for such other employing unit.

For purposes of this subsection, the term "crew leader" means an employing unit which furnishes individuals to perform agricultural labor for any other employing unit; pays, either on the crew leader's behalf or on behalf of such other employing unit, the individuals so furnished by the crew leader for the agricultural labor performed by them; and has not entered into a written agreement with such other employing unit under which such individual is designated as an employee of such other employing unit.

(8) A person performing after December 31, 1977, domestic service in a private home, local college club, or local chapter of a college fraternity or sorority if performed for an employing unit who paid cash remuneration of one thousand dollars or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year.

b. The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(1) The service is localized in this state, or

(2) The service is not localized in any state but some of the service is performed in this state and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state, or

(3) The service is performed outside the United States, except in Canada, after December 31, 1971, by a citizen of the United States in the employ of an American employer, other than service which is deemed "employment" under the provisions of subparagraphs (1) and (2) or the parallel provisions of another state law, or service performed after December 31 of the year in which the United States secretary of labor approved the first time the unemployment compensation law submitted by the Virgin Islands, if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States but the employer is an individual who is a resident of this state, or the employer is a corporation which is organized under the laws of this state, or the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of subdivisions (a) and (b) of this subparagraph is met, but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(d) An "American employer", for purposes of this subparagraph, means a person who is an individual who is a resident of the United States or a partnership if two-thirds or more of the partners are residents of the United States, or a trust, if all of the trustees are residents of the United States, or a corporation organized under the laws of the United States or of any state.

(4) Notwithstanding the provisions of subparagraphs (1), (2), and (3), all service performed after December 31, 1971, by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office from which the

operations of such vessel operating on navigable waters within and without the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state, and

(5) Notwithstanding any other provisions of this subsection, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which, as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act (26 U.S.C. § 3301-3308), is required to be covered under this chapter.

c. Services performed within this state but not covered under paragraph "b" of this subsection shall be deemed to be employment subject to this chapter if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

d. Services not covered under paragraph "b" of this subsection, and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter.

e. Service shall be deemed to be localized within a state if:

(1) The service is performed entirely within such state, or

(2) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

f. Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the division of job service that such individual has been and will continue to be free from control or direction over the performance of such services, both under the individual's contract of service and in fact.

g. The term "employment" shall not include:

(1) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States; provided, however, that the general language just used shall not include any such instrumentality of the United States after Congress has, by appropriate legal action, expressly permitted the several states to require such instrumentalities to make payments into an employment fund under a state unemployment compensation law; and all such instrumentalities so released from the constitutional immunity to make the contributions, imposed by this

chapter shall, thereafter, become subject to all the provisions of said chapter, and such provisions shall then be applicable to such instrumentalities and to all services performed for such instrumentalities in the same manner, to the same extent and on the same terms as are applicable to all other employers, employing units, individuals and services. Should the social security board, acting under section 1603 of the federal Internal Revenue Code, fail to certify the state of Iowa for any particular calendar year, then the payments required of such instrumentalities with respect to such year shall be refunded by the division of job service from the fund in the same manner and within the same period as is provided for in section 96.14, subsection 5, which section provides for the refunding of contributions erroneously collected.

(2) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress; provided, that the division is hereby authorized and directed to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective ten days after publication thereof in the manner provided in section 96.11, subsection 2 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this chapter.

(3) *Agricultural labor.* For purposes of this chapter, the term "agricultural labor" means any service performed prior to January 1, 1972, which was agricultural labor as defined in this subparagraph prior to such date, provided that after December 31, 1977, this subparagraph shall not exclude from employment agricultural labor specifically included as agricultural labor under the definition of employment in this subsection, but shall otherwise include remunerated service performed after December 31, 1971:

(a) On a farm in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended [46 Stat. 1550, Sec. 3,

12 U.S.C. 1141j], or in connection with ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(d) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one half of the commodity with respect to which such service is performed;

(ii) In the employ of a group of operators of farms (or a co-operative organization of which such operators are members) in the performance of service described in (i) of subdivision (d) of this subparagraph, but only if such operators produced more than one half of the commodity with respect to which such service is performed;

(iii) The provisions of (i) and (ii) of subdivision (d) of this subparagraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(e) On a farm operated for profit if such service is not in the course of the employer's trade or business.

(f) The term "farm" includes livestock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(4) Domestic service in a private home prior to January 1, 1978, and after December 31, 1977, domestic service in a private home not covered as domestic service under the definition of employment.

(5) Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of eighteen in the employ of the child's father or mother.

(6) Service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university or by the spouse of such student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance.

Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a

full-time program taken for credit at such institution, which combines academic instruction with work experience, if the service is an integral part of the program and the institution has so certified to the employer, except that this subparagraph does not apply to service performed in a program established for or on behalf of an employer or group of employers.

Service performed in the employ of a hospital if such service is performed by a patient of the hospital.

(7) Services performed by an individual, who is not treated as an employee, for a person who is not treated as an employer, under either of the following conditions:

(a) The services are performed by the individual as a salesperson and as a licensed real estate agent; substantially all of the remuneration for the services is directly related to sales or other output rather than to the number of hours worked; and the services are performed pursuant to a written contract between the individual and the person for whom the services are performed, which provides that the individual will not be treated as an employee with respect to the services for federal tax purposes.

(b) The services are performed by an individual engaged in the trade or business of selling or soliciting the sale of consumer products to any buyer on a buy-sell basis or a deposit-commission basis, for resale by the buyer or another person in the home or in a place other than a permanent retail establishment, or engaged in the trade or business of selling or soliciting the sale of consumer products in the home or in a place other than a permanent retail establishment; substantially all of the remuneration for the services is directly related to sales or other output rather than to the number of hours worked; and the services are performed pursuant to a written contract between the individual and the person for whom the services are performed, which provides that the individual will not be treated as an employee with respect to the services for federal tax purposes.

19. "Employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.

20. "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period has received, prior to such week, all of the regular benefits that were available to the individual under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and former armed forces personnel under 5 U.S.C., chapter 85) in the individual's current benefit year that includes such weeks. Provided that for the purposes of this subsection an individual shall be deemed to have received all of the regular benefits that were available to the individual, although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in the individual's benefit year the individual may subsequently be determined to be entitled to add regular benefits, or:

a. The individual's benefit year having expired prior to such week, has no, or insufficient, wages and on the basis of which the individual could establish a new benefit year that would include such week, and

b. The individual has no right to unemployment benefits or allowances under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the United States secretary of labor, and the individual has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law the individual is considered an exhaustee.

21. "*Extended benefit period*" means a period which begins with the third week after a week for which there is a state "on" indicator, and ends with either of the following weeks, whichever occurs later:

a. The third week after the first week for which there is a state "off" indicator.

b. The thirteenth consecutive week of such period.

However, an extended benefit period shall not begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

22. "*Extended benefits*" means benefits (including benefits payable to federal civilian employees and to former armed forces personnel pursuant to 5 U.S.C., chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in the individual's eligibility period.

23. "*Fund*" means the unemployment compensation fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

24. "*Governmental entity*" means a state, a state instrumentality, a political subdivision or an instrumentality of a political subdivision, or a combination of one or more of the preceding.

25. "*Hospital*" means an institution which has been licensed, certified, or approved by the department of inspections and appeals as a hospital.

26. "*Institution of higher education*" means an educational institution which admits as regular students individuals having a certificate of graduation from a high school, or the recognized equivalent of such certificate; is legally authorized in this state primarily to provide a program of education beyond high school; provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and is a public or other nonprofit institution.

27. "*Insured work*" means employment for employers.

28. "*Nonprofit organization*" means an organization described in the federal Internal Revenue Code, 26 U.S.C. § 501(c)(3), which is exempt from income taxation under 26 U.S.C. § 501(a).

29. There is a state "off" indicator for a week if, for the period consisting of the week and the immediately preceding twelve weeks, the rate of insured unemployment under the state law was less than five percent, or less than one hundred twenty percent of the average of the rates for thirteen weeks ending in each of the two preceding calendar years, except that, notwithstanding any such provision of this subsection, any week for which there would otherwise be a state "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator.

30. There is a state "on" indicator for a week if the rate of insured unemployment under the state law for the period consisting of the week and the immediately preceding twelve weeks equaled or exceeded five percent and equaled or exceeded one hundred twenty percent of the average of the rates for the corresponding thirteen-week period ending in each of the two preceding calendar years.

31. "*Public housing agency*" means any agency described in section 3(b)(6) of the United States Housing Act of 1937, as amended through January 1, 1989.

32. "*Rate of insured unemployment*", for purposes of determining state "on" indicator and state "off" indicator, means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits in Iowa for weeks of unemployment with respect to the most recent thirteen consecutive week period, as determined by the division of job service on the basis of its reports to the United States secretary of labor, by the average monthly insured employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

33. "*Regular benefits*" means benefits payable to an individual under this or under any other state law (including benefits payable to federal civilian employees and to former armed forces personnel pursuant to 5 U.S.C., chapter 85) other than extended benefits.

34. "*State*" includes, in addition to the states of the United States, the District of Columbia, Canada, Puerto Rico, and the Virgin Islands.

35. "*State law*" means the unemployment insurance law of any state, approved by the United States secretary of labor under 26 U.S.C. 3304.

36. "*Statewide average weekly wage*" means the amount computed by the division at least once a year on the basis of the aggregate amount of wages reported by employers in the preceding twelve-month period ending on December 31 and divided by the product of fifty-two times the average mid-month

employment reported by employers for the same twelve-month period. In determining the aggregate amount of wages paid statewide, the division shall disregard any limitation on the amount of wages subject to contributions under this chapter.

37. "*Taxable wages*" means an amount of wages upon which an employer is required to contribute based upon wages which have been paid during a calendar year to an individual by an employer or the employer's predecessor, in this state or another state which extends a like comity to this state, with respect to employment, upon which the employer is required to contribute, which equals the greater of the following:

a. Sixty-six and two-thirds percent of the statewide average weekly wage which was used during the previous calendar year to determine maximum weekly benefit amounts, multiplied by fifty-two and rounded to the next highest multiple of one hundred dollars.

b. That portion of wages subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund.

38. "*Total and partial unemployment*".

a. An individual shall be deemed "*totally unemployed*" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the division of job service, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

39. "*Unemployment compensation administration fund*" means the unemployment compensation administration fund established by this chapter, from which administration expenses under this chapter shall be paid.

40. "*United States*" for the purposes of this section includes the states, the District of Columbia,

the Commonwealth of Puerto Rico and the Virgin Islands.

41. "*Wages*" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated and determined in accordance with rules prescribed by the division of job service. Wages payable to an individual for insured work performed prior to January 1, 1941, shall, for the purposes of sections 96.3, 96.4, and this section, be deemed to be wages paid within the calendar quarter with respect to which such wages were payable.

The term wages shall not include:

a. The amount of any payment, including any amount paid by an employer for insurance or annuities or into a fund to provide for such payment, made to or on behalf of an employee or any of the employee's dependents under a plan or system established by an employer which makes provisions for the employer's employees generally, or for the employer's employees generally and their dependents, or for a class, or classes of the employer's employees, or for a class or classes of the employer's employees and their dependents, on account of retirement, sickness, accident disability, medical or hospitalization expense in connection with sickness or accident disability, or death.

b. Any payment paid to an employee, including any amount paid by any employer for insurance or annuities or into a fund to provide for any such payment, on account of retirement.

c. Any payment on account of sickness or accident disability, or medical or hospitalization expense in connection with sickness or accident disability made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer.

d. Remuneration for agricultural labor paid in any medium other than cash.

42. "*Week*" means such period or periods of seven consecutive calendar days ending at midnight, or as the division of job service may by regulations prescribe.

43. "*Weekly benefit amount*". An individual's "*weekly benefit amount*" means the amount of benefits the individual would be entitled to receive for one week of total unemployment. An individual's weekly benefit amount, as determined for the first week of the individual's benefit year, shall constitute the individual's weekly benefit amount throughout such benefit year.

95 Acts, ch 43, §3
Subsection 18, paragraph g, subparagraph (3), subparagraph subdivision (f) amended

CHAPTER 97B

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (IPERS)

97B.41 Definitions.

When used in this chapter:

1. "*Abolished system*" means the Iowa old-age and survivors' insurance system repealed by sections 97.50 to 97.53.

2. "*Accumulated contributions*" means the total obtained as of any date, by accumulating each individual contribution by the member at two percent interest plus interest dividends for all completed calendar years and for any completed calendar year for which the interest dividend has not been declared and for completed months of partially completed calendar years at two percent interest plus the interest dividend rate calculated for the previous year, compounded annually, from the end of the calendar year in which such contribution was made to the first day of the month of such date.

3. "*Active member*" during a calendar year means a member who made contributions to the system at any time during the calendar year and who:

a. Had not received or applied for a refund of the member's accumulated contributions for withdrawal or death, and

b. Had not commenced receiving a retirement allowance.

4. "*Actuarial equivalent*" means a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the department.

5. "*Beneficiary*" means the person or persons who are entitled to receive any benefits payable under this chapter at the death of a member, if the person or persons have been designated on a form provided by the department and filed with the department. If no such designation is in effect at the time of death of the member or if no person so designated is living at that time, then the beneficiary is the estate of the member.

6. "*Bona fide retirement*" means a retirement by a vested member which meets the requirements of section 97B.52A, subsection 1, and in which the member is eligible to receive benefits under this chapter.

7. "*Contributions*" means the payments to the fund required herein, by the employer and by the members, to provide the benefits of the system.

8. a. "*Employer*" means the state of Iowa, the counties, municipalities, agencies, public school districts, all political subdivisions, and all of their departments and instrumentalities, including area agencies on aging, other than those employing persons as specified in paragraph "b", subparagraph (19), and joint planning commissions created under chapter 28E or 28I.

If an interstate agency is established under chapter 28E and similar enabling legislation in an adjoining state, and an employer had made contributions to the system for employees performing functions which are transferred to the interstate agency, the employees of the interstate agency who perform those func-

tions shall be considered to be employees of the employer for the sole purpose of membership in the system, although the employer contributions for those employees are made by the interstate agency.

b. "*Employee*" means an individual who is employed as defined in this chapter, except:

(1) Elective officials in positions for which the compensation is on a fee basis, elective officials of school districts, elective officials of townships, and elective officials of other political subdivisions who are in part-time positions, unless the elective official makes an application to the department to be covered under this chapter. An elective official who made an application to the department to be covered under this chapter may terminate membership under this chapter by informing the department in writing of the expiration of the member's term of office. A county attorney is an employee for purposes of this chapter whether that county attorney is employed on a full-time or part-time basis.

(2) Individuals who are enrolled as students and whose primary occupations are as students who are incidentally employed by employers.

(3) Graduate medical students while serving as interns or resident doctors in training at any hospital, or county medical examiners and deputy county medical examiners under chapter 331, division V, part 8.

(4) Members of the general assembly of Iowa and temporary employees of the general assembly of Iowa, unless such members or employees make an application to the department to be covered under this chapter. A member of the general assembly who made an application to the department to be covered under this chapter may terminate membership under this chapter by informing the department in writing of the member's intent to terminate membership.

Temporary employees of the general assembly who have elected coverage under this chapter may terminate membership by sending written notification to the department of their separation from service.

(5) Nonvested employees of drainage and levee districts, unless those employees make an application to the department to be covered under this chapter.

(6) Employees hired for temporary employment of less than six months or one thousand and forty hours in a calendar year. An employee who works for an employer for six or more months in a calendar year or who works for an employer for more than one thousand forty hours in a calendar year is not a temporary employee under this subparagraph. Adjunct instructors are temporary employees for the purposes of this chapter. As used in this section, unless the context otherwise requires, "*adjunct instructors*" means instructors employed by a community college without a continuing contract, whose

teaching load does not exceed one-half time for two full semesters or three full quarters per calendar year.

(7) Employees of a community action program, determined to be an instrumentality of the state or a political subdivision, unless the employees elect by filing an application with the department to be covered under this chapter and the department has approved the election. Coverage will begin when the election has been approved by the department.

(8) Magistrates other than those who elect by filing an application with the department to be covered under this chapter.

(9) Persons employed under the federal Job Training Partnership Act of 1982, Pub. L. No. 97-300, unless these employees make an application to the department to be covered under this chapter and the department has approved the election. Coverage will begin when the election has been approved by the department.

(10) Foreign exchange teachers and visitors including alien scholars, trainees, professors, teachers, research assistants, and specialists in their field of specialized knowledge or skill.

(11) Members of the ministry, rabbinate, or other religious order who have taken the vow of poverty unless, within one year of commencing employment or no later than July 1, 1985 for individuals who are members of the system on July 1, 1984, a member makes an application to the department to be covered under this chapter.

(12) Persons employed as city managers, or as city administrators performing the duties of city managers, under a form of city government listed in chapter 372 or chapter 420 unless such employees shall make an application to the department to be covered under the provisions of this chapter.

(13) Members of the state transportation commission, the board of parole, and the state health facilities council unless a member elects by filing an application with the department to be covered under this chapter.

(14) Employees of the Iowa dairy industry commission established under chapter 179, the Iowa beef cattle producers association established under chapter 181, the Iowa pork producers council established under chapter 183A, the Iowa turkey marketing council established under chapter 184A, the Iowa soybean promotion board established under chapter 185, the Iowa corn promotion board established under chapter 185C, and the Iowa egg council established under chapter 196A.

(15) Judicial hospitalization referees appointed under section 229.21.

(16) Employees of the Iowa peace institute, established in chapter 38*, unless an employee files an application with the department to be covered under this chapter.

(17) Employees appointed by the state board of regents who, at the discretion of the state board of regents, elect coverage in a retirement system qualified by the state board of regents that meets the criteria of section 97B.2.

(18) Persons employed by the board of trustees for the statewide fire and police retirement system established in section 411.36, unless these employees make an application to the department to be covered under this chapter and the department has approved the election. Coverage will begin when the election has been approved by the department.

(19) Employees of an area agency on aging, if as of July 1, 1994, the agency provides for participation by all of its employees in an alternative qualified plan pursuant to the requirements of the federal Internal Revenue Code.

9. "*Employment for any calendar quarter*" means any service performed under an employer-employee relationship under this chapter for which wages are reported in the calendar quarter. For the purposes of this chapter, elected officials are deemed to be in employment for all quarters of the elected officials' respective terms of office, even if the elected officials have selected a method of payment of wages which results in the elected officials not being credited with wages every quarter of a year.

9A. "*First month of entitlement*" means the first month for which a member is qualified to receive retirement benefits under this chapter. Effective January 1, 1995, a member who meets all of the following requirements is qualified to receive retirement benefits under this chapter:

- a. Has attained the minimum age for retirement.
- b. If the member has not attained seventy years of age, has terminated all employment covered under the chapter or formerly covered under the chapter pursuant to section 97B.42.
- c. Has filed a completed application for benefits.
- d. Has survived into the month for which the member's first retirement allowance is payable by the system.

10. "*Inactive member*" with respect to future service means a member who at the end of a year had not made any contributions during the current year and who has not received a refund of the member's accumulated contributions.

11. "*Member*" means an employee or a former employee who maintains the employee's or former employee's accumulated contributions in the system. The former employee is not a member if the former employee has received a refund of the former employee's accumulated contributions.

12. "*Membership service*" means service rendered by a member after July 4, 1953. Years of membership service shall be counted to the complete quarter calendar year. However, membership service for a calendar year shall not include more than four quarters. In determining a member's period of membership service, the department shall combine all periods of service for which the member has made contributions. If the department has not maintained the accumulated contribution account of the member for a period of service, as provided pursuant to section 97B.53, subsection 6, the department shall credit the member for the service if the member submits satisfactory proof to the department that the member

did make the contributions for the period of service and did not take a refund for the period of service. However, the department shall not implement the amendments to this subsection, as enacted in 1994 Iowa Acts, chapter 1183, unless and until the department determines that the most recent annual actuarial valuation of the retirement system indicates that the employer and employee contribution rates in effect under section 97B.11 can absorb the amendments to this subsection and to section 97B.53, subsections 3 and 7, section 97B.53, subsection 6, unnumbered paragraph 1, and section 97B.70, by enacting a new subsection 4, contained in 1994 Iowa Acts, chapter 1183, after meeting the other established priorities of the system. Until the amendments are implemented, the department shall continue to implement the provisions of section 97B.41, subsection 12, Code Supplement 1993. As used in this subsection, unless the context otherwise requires, "*other established priorities of the system*" means that commencing January 1 following the most recent annual actuarial valuation of the system, the department has increased the covered wage limitation from the previous year by three thousand dollars, in accordance with section 97B.41, subsection 20, paragraph "b", subparagraph (11), and that the department has implemented the amendments to section 97B.66, unnumbered paragraphs 1 and 2, section 97B.72, unnumbered paragraphs 1 and 2, section 97B.72A, subsection 1, unnumbered paragraph 1, section 97B.73A, unnumbered paragraph 1, and section 97B.74, unnumbered paragraphs 1 and 2, contained in 1994 Iowa Acts, chapter 1183.

13. "*Prior service*" means any service by an employee rendered at any time prior to July 4, 1953.

14. "*Retired member*" means a member who has applied for the member's retirement allowance and has survived into at least the first day of the member's first month of entitlement.

15. "*Service*" means uninterrupted service under this chapter by an employee, except an elected official, from the date the employee last entered employment of the employer until the date the employee's employment shall be terminated by death, retirement, resignation or discharge; provided, however, the service of any employee shall not be deemed to be interrupted by:

a. Service in the armed forces of the United States, if the employee was employed by the employer immediately prior to entry into the armed forces, and if the employee was released from service and returns to covered employment with the employer within twelve months of the date on which the employee has the right of release from service or within a longer period as provided by the applicable laws of the United States.

b. Leave of absence or vacation authorized by the employer for a period not exceeding twelve months.

c. The termination at the end of the school year of the contract of employment of an employee in the public schools of the state of Iowa, provided the employee enters into a further contract of employment

in the public schools of the state of Iowa for the next succeeding school year.

d. Temporary or seasonal interruptions in service such as service of school bus drivers, schoolteachers under regular contract, interim teachers or substitute teachers, instructors at Iowa state university of science and technology, the state university of Iowa, or university of northern Iowa, employees in state schools or hospital dormitories, other positions when the temporary suspension of service does not terminate the period of employment of the employee, or temporary employees of the general assembly.

16. "*Service*" for an elected official means the period of membership service for which contributions are made beginning on the date an elected official assumes office and ending on the expiration date of the last term the elected official serves, excluding all the intervening periods during which the elected official is not an elected official.

17. "*System*" means the retirement plan as contained herein or as duly amended.

18. "*Three-year average covered wage*" means a member's covered wages averaged for the highest three years of the member's service, except as otherwise provided in this subsection. The highest three years of a member's covered wages shall be determined using calendar years. However, if a member's final quarter of a year of employment does not occur at the end of a calendar year, the department may determine the wages for the third year by computing the average quarter of all quarters from the member's highest calendar year of covered wages not being used in the selection of the two highest years and using the computed average quarter for each quarter in the third year in which no wages have been reported in combination with the final quarter or quarters of the member's service to create a full year. However, the department shall not use the member's final quarter of wages if using that quarter would reduce the member's three-year average covered wage. If the three-year average covered wage of a member exceeds the highest maximum covered wages in effect for a calendar year during the member's period of service, the three-year average covered wage of the member shall be reduced to the highest maximum covered wages in effect during the member's period of service.

19. a. "*Vested member*" means a member who has attained through age or sufficient years of service eligibility to receive monthly retirement benefits upon the member's retirement. A vested member must meet one of the following requirements:

(1) Prior to July 1, 1965, had attained the age of forty-eight and completed at least eight years of service.

(2) Between July 1, 1965 and June 30, 1973, had completed at least eight years of service.

(3) On or after July 1, 1973, has completed at least four years of service.

(4) Has attained the age of fifty-five.

(5) On or after July 1, 1988, an inactive member who had accumulated, as of the date of the member's

last termination of employment, years of membership service equal to or exceeding the years of membership service specified in this subsection for qualifying as a vested member on that date of termination.

b. "Active vested member" means an active member who has attained sufficient membership service to achieve vested status.

c. "Inactive vested member" means an inactive member who was a vested member at the time of termination of employment.

20. a. "Wages" means all remuneration for employment, including the cash value of remuneration paid in a medium other than cash, but not including the cash value of remuneration paid in a medium other than cash as necessitated by the convenience of the employer. The amount agreed upon by the employer and employee for remuneration paid in a medium other than cash shall be reported to the department by the employer and is conclusive of the value of the remuneration. "Wages" does not include special lump sum payments made as payment for accrued sick leave or accrued vacation or payments made as an incentive for early retirement or as payments made upon dismissal, severance, or a special bonus payment. Wages for an elected official means the salary received by an elected official, exclusive of expense and travel allowances.

Wages for a member of the general assembly means the total compensation received by a member of the general assembly, whether paid in the form of per diem or annual salary, exclusive of expense and travel allowances paid to a member of the general assembly except as otherwise provided in this paragraph. Wages includes per diem payments paid to members of the general assembly during interim periods between sessions of the general assembly. Wages also includes daily allowances to members of the general assembly for nontravel expenses of office during a session of the general assembly, but does not include the portion of the daily allowance which exceeds the maximum established by law for members from Polk county.

b. "Covered wages" means wages of a member during the periods of membership service as follows:

(1) For the period from July 4, 1953, through December 31, 1953, and each calendar year from January 1, 1954, through December 31, 1963, wages not in excess of four thousand dollars.

(2) For each calendar year from January 1, 1964, through December 31, 1967, wages not in excess of four thousand eight hundred dollars.

(3) For each calendar year from January 1, 1968, through December 31, 1970, wages not in excess of seven thousand dollars, for each calendar year from January 1, 1971 through December 31, 1972, wages not in excess of seven thousand eight hundred dollars, and for each calendar year from January 1, 1973 through December 31, 1975, wages not in excess of ten thousand eight hundred dollars.

(4) For each calendar year from January 1, 1976, through December 31, 1983, wages not in excess of twenty thousand dollars.

(5) For each calendar year from January 1, 1984, through December 31, 1985, wages not in excess of twenty-one thousand dollars per year.

(6) For the calendar year from January 1, 1986, through December 31, 1986, wages not in excess of twenty-two thousand dollars.

(7) For the calendar year from January 1, 1987, through December 31, 1987, wages not in excess of twenty-three thousand dollars.

(8) For the calendar year beginning January 1, 1988, and ending December 31, 1988, wages not in excess of twenty-four thousand dollars.

(9) For the calendar year beginning January 1, 1989, and ending December 31, 1989, wages not in excess of twenty-six thousand dollars.

(10) For the calendar year beginning January 1, 1990, and ending December 31, 1990, wages not in excess of twenty-eight thousand dollars.

(11) Commencing January 1, 1991, for each calendar year, the department shall increase the covered wages limitation from the previous calendar year by three thousand dollars if the annual actuarial valuation of the assets and liabilities of the retirement system indicates that the cost of the increase in covered wages can be absorbed within the employer and employee contribution rates in effect under section 97B.11. However, covered wages shall not exceed fifty-five thousand dollars for a calendar year.

If the annual actuarial valuation of the retirement system in any year indicates that the cost of the increase provided under this subparagraph and the increase in the monthly benefit formula provided in section 97B.49, subsection 5, paragraph "b", cannot be absorbed within the employer and employee contribution rates in effect under section 97B.11, the department shall reduce the increase provided in this subparagraph by an amount sufficient to pay for the increase in the benefit percent.

Notwithstanding any other provision of this chapter providing for the payment of the benefits provided in section 97B.49, subsection 16, the department shall establish the covered wages limitation which applies to members covered under section 97B.49, subsection 16, at the same level as is established under this subparagraph for other members of the system.

(12) Effective July 1, 1992, covered wages does not include wages to a member on or after the effective date of the member's retirement unless the member is reemployed, as provided under section 97B.48A.

(13) If a member is employed by more than one employer during a calendar year, the total amount of wages paid to the member by the several employers shall be included in determining the limitation on covered wages as provided in this paragraph. If the amount of wages paid to a member by the member's several employers during a calendar year exceeds the covered wage limit, the amount of such excess shall not be subject to the contributions required by section 97B.11.

21. "Years of prior service" means the total of all periods of prior service of a member. In computing credit for prior service, service of less than a full

quarter shall be rounded up to a full quarter. Where a member had prior service as a teacher, a full year of service shall be granted that member if the member had three quarters of service and a contract for employment for the following school year.

94 Acts, ch 1183, §20, 97; 95 Acts, ch 102, §1-4

*Chapter 38 repealed by 95 Acts, ch 204, §19; corrective legislation is pending

Subsection 9A and 1995 amendments to subsections 8 and 14 apply retroactively to January 1, 1995; 95 Acts, ch 102, §11

1994 amendments to subsection 12 effective July 1, 1995; 94 Acts, ch 1183, §20, 97

1994 amendments to subsection 18 effective January 1, 1995; 94 Acts, ch 1183, §97

Subsection 8, paragraph b, subparagraph (1) amended

Subsection 8, paragraph b, subparagraph (4), unnumbered paragraph 1 amended

NEW subsection 9A

Subsections 12 and 14 amended

97B.49 Monthly payments of allowance.

Each member, upon retirement on or after the member's normal retirement date, is entitled to receive a monthly retirement allowance determined under this section. For an inactive vested member the monthly retirement allowance shall be determined on the basis of this section and section 97B.50 as they are in effect on the date of the member's retirement.

1. For each active member employed before January 1, 1976, and retiring on or after January 1, 1976, and for each member who was a vested member before January 1, 1976, with four or more complete years of service, a formula benefit shall be determined equal to the larger of the benefit determined under this subsection and subsection 3 of this section as applicable, or the benefit determined under subsection 5 of this section. The amount of the monthly formula benefit for each such active or vested member who retired on or after January 1, 1976, shall be equal to one-twelfth of one and fifty-seven hundredths percent per year of membership service multiplied by the member's average annual covered wages; but in no case shall the amount of monthly formula benefit accrued for membership service prior to July 1, 1967, be less than the monthly annuity at the normal retirement date determined by applying the sum of the member's accumulated contributions, the member's employer's accumulated contributions on or before June 30, 1967, and any retirement dividends standing to the member's credit on or before December 31, 1966, to the annuity tables in use by the department with due regard to the benefits payable from such accumulated contributions under sections 97B.52 and 97B.53.

2. For each active and vested member retiring with less than four complete years of service and who therefore cannot have a benefit determined under the formula benefit of subsection 1 or subsection 5 of this section a monthly annuity for membership service shall be determined by applying the member's accumulated contributions and the employer's matching accumulated contributions as of the effective retirement date and any retirement dividends standing to the member's credit on or before December 31, 1966, to the annuity tables in use by the department according to the member's age.

3. For each member employed before January 1, 1976, who has qualified for prior service credit in accordance with the first paragraph of section 97B.43, there shall be determined a benefit of eight-tenths of one percent per year of prior service credit multiplied by the monthly rate of the member's total remuneration not in excess of three thousand dollars annually during the twelve consecutive months of the member's prior service for which that total remuneration was the highest. An additional three-tenths of one percent of the remuneration not in excess of three thousand dollars annually shall be payable for prior service during each year in which the accrued liability for benefit payments created by the abolished system is funded by appropriation from the Iowa public employees' retirement fund.

4. For each active member retiring on or after June 30, 1973, and who has completed ten or more years of membership service, the total amount of monthly benefit payable at the normal retirement date for prior service and membership service shall not be less than fifty dollars per month. If benefits commence on an early retirement date, the amount of benefit shall be reduced in accordance with section 97B.50. If an optional allowance is selected under section 97B.51, the amount payable shall be the actuarial equivalent of the minimum benefit. An employee who is in employment on a school year or academic year basis, will be considered to be an active member as of June 30, 1973, if the employee completes the 1972-1973 school year or academic year.

5. a. For each active or inactive vested member retiring on or after July 1, 1986, and before July 1, 1990, with four or more complete years of service, a monthly benefit shall be computed which is equal to one-twelfth of an amount equal to fifty percent of the three-year average covered wage multiplied by a fraction of years of service.

b. For each active or inactive vested member retiring on or after July 1, 1990, with four or more complete years of service, a monthly benefit shall be computed which is equal to one-twelfth of an amount equal to fifty-two percent of the three-year average covered wage multiplied by a fraction of years of service.

Commencing July 1, 1991, the department shall increase the percentage multiplier of the three-year average covered wage by an additional two percent each July 1 until reaching sixty percent of the three-year average covered wage if the annual actuarial valuation of the retirement system indicates for that year that the cost of this increase in the percentage of the three-year average covered wage used in computing retirement benefits can be absorbed within the employer and employee contribution rates in effect under section 97B.11. However, commencing July 1, 1994, if the annual actuarial valuation of the retirement system indicates that the employer and employee contribution rates in effect under section 97B.11 can absorb an increase in the percentage multiplier in excess of two percent, the department shall increase the percentage multiplier for that year beyond two percent to the extent which the increase

can be absorbed by the contribution rates in effect, not to exceed a maximum percentage multiplier of sixty percent. The increase in the percentage multiplier for a year applies only to the members retiring on or after July 1 of the respective year.

If the annual actuarial valuation of the retirement system in any year indicates that the full cost of the increase provided under this paragraph cannot be absorbed within the employer and employee contribution rates in effect under section 97B.11, the department shall reduce the increase to a level which the department determines can be so absorbed.

Notwithstanding any other provision of this chapter providing for the payment of the benefits provided in subsection 16, the department shall establish the percentage multiplier which applies to members covered under subsection 16 at the same level as is established under this subsection for other members of the system.

By November 15, 1995, the department shall set aside from other moneys in the retirement fund three million eight hundred sixty thousand dollars. The moneys set aside shall be from the funds generated by the employer and employee contributions in effect under section 97B.11 that exceed the amount necessary to fund the system's existing liabilities, as determined in the annual actuarial valuation of the system as of June 30, 1995. If the annual actuarial valuation indicates that the amount of the employer and employee contributions in excess of the amount necessary to fund existing liabilities is less than three million eight hundred sixty thousand dollars, the department shall set aside all funds that are available. The funds set aside shall not be used in determining the covered wage limitation pursuant to section 97B.41, subsection 20, paragraph "b", subparagraph (11), on January 1, 1996. However, any funds set aside which are not specifically dedicated to a purpose by the Seventy-sixth General Assembly shall be used in determining the covered wage limitation thereafter.

In accordance with sections 97D.1 and 97D.4, it is the intent of the general assembly that once the goal of sixty percent of the three-year average covered wage is attained for a percentage multiplier, the department shall submit to the public retirement systems committee a plan for future benefit enhancements. This plan shall include, but is not limited to, continuation in the increase in the covered wage ceiling until reaching fifty-five thousand dollars for a calendar year, providing for annual adjustments in the annual dividends paid to retired members as provided in section 97B.49, subsection 13, and providing for the indexing of terminated vested members' earned benefits at a rate of three percent per year calculated from the date of termination from covered employment until the date of retirement.

c. For the purposes of this subsection, "*fraction of years of service*" means a number, not to exceed one, equal to the sum of the years of membership service and the number of years of prior service divided by thirty years.

d. If benefits under this subsection commence on an early retirement date, the amount of benefit shall be reduced in accordance with section 97B.50.

6. On January 1, 1976, for each member who retired before January 1, 1976, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for December 1975 is increased by ten percent for the first calendar year or portion of a calendar year the member was retired, and by an additional five percent for each calendar year after the first calendar year the member was retired through the calendar year beginning January 1, 1975. The total increase shall not exceed one hundred percent. Effective July 1, 1987, there is appropriated for each fiscal year from the Iowa public employees' retirement fund created in section 97B.7 to the department of personnel from funds not otherwise appropriated an amount sufficient to fund the monthly retirement allowance increases paid under this subsection.

The benefit increases granted to members retired under the system on January 1, 1976 shall be granted only on January 1, 1976 and shall not be further increased for any year in which the member was retired after the calendar year beginning January 1, 1975.

7. a. Notwithstanding other provisions of this chapter, a member who is or has been employed as a conservation peace officer under section 456A.13 and who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as a conservation peace officer, may elect to receive, in lieu of the receipt of any benefits under subsection 5 of this section, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a conservation peace officer, with benefits payable during the member's lifetime.

b. A conservation peace officer who retires on or after July 1, 1986, and before July 1, 1988, and has not completed twenty-five years of membership service as required under this subsection is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a conservation peace officer multiplied by a fraction of years of service as a conservation peace officer. For the purpose of this subsection, "*fraction of years of service*" means a number, not to exceed one, equal to the sum of the years of membership service as a conservation peace officer, divided by twenty-five years. On or after July 1, 1986, if the conservation peace officer has not reached sixty years of age at retirement, the monthly retirement allowance shall be reduced by five-tenths of one percent per month for each month that the conservation peace officer's retirement precedes the date on which the conservation peace officer attains sixty years of age.

The annual contribution necessary to pay for the additional benefits provided in this paragraph, shall be paid by the employer and employee in the same

proportion that employer and employee contributions are made under section 97B.11.

c. There is appropriated from the state fish and game protection fund to the department of personnel an actuarially determined amount determined by the Iowa public employees' retirement system sufficient to pay for the additional benefits to conservation peace officers provided by this section, as a percentage, in paragraph "a" and for the employer portion of the benefits provided in paragraph "b". The amount is in addition to the contribution paid by the employer under section 97B.11. The cost of the benefits relating to conservation peace officers within the fish and game division of the department of natural resources shall be paid from the state fish and game protection fund and the cost of the benefits relating to the other conservation peace officers of the department shall be paid from the general fund.

8. a. Notwithstanding other provisions of this chapter, a member who is or has been employed as a peace officer and who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as a peace officer, may elect to receive, in lieu of the benefits under subsection 5 of this section, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a peace officer, with benefits payable during the member's lifetime.

A peace officer who retires on or after July 1, 1986, and before July 1, 1988, and has not completed twenty-five years of membership service as required under this subsection is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a peace officer multiplied by the fraction of years of service as a peace officer. For the purpose of this subsection, "*fraction of years of service*" means a number, not to exceed one, equal to the sum of the years of membership service as a peace officer, divided by twenty-five years. On or after July 1, 1984, if the peace officer has not reached sixty years of age at retirement, the monthly retirement allowance shall be reduced by five-tenths of one percent per month for each month that the peace officer's retirement precedes the date on which the peace officer attains sixty years of age.

For the purpose of this subsection membership service as a peace officer means service under this system as any or all of the following:

- (1) As a county sheriff as defined in section 39.17.
- (2) As a deputy sheriff appointed pursuant to section 341.1, Code 1981, or section 331.903.
- (3) As a marshal or police officer in a city not covered under chapter 400.

b. Each county and applicable city and employee eligible for benefits under this section shall annually contribute an amount determined by the department of personnel, as a percentage of covered wages, to be necessary to pay for the additional benefits provided by this section. The annual contribution in excess of

the employer and employee contributions required by this chapter shall be paid by the employer and the employee in the same proportion that employer and employee contributions are made under section 97B.11. The additional percentage of covered wages shall be calculated separately by the department for service under paragraph "a", subparagraphs (1) and (2), and for service under paragraph "a", subparagraph (3), and each shall be an actuarially determined amount for that type of service which, if contributed throughout the entire period of active service, would be sufficient to provide the pension benefit provided in this section.

9. Effective July 1, 1978, for each member who retired from the system prior to January 1, 1976, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1978 is increased as follows:

- a. For the first ten years of service, fifty cents per month for each complete year of service.
- b. For the eleventh through the twentieth years of service, two dollars per month for each complete year of service.
- c. For the twenty-first through the thirtieth years of service, three dollars per month for each complete year of service.

Effective July 1, 1979, the increases granted to members under this subsection shall be paid to contingent annuitants and to beneficiaries.

10. Notwithstanding sections of this chapter relating to eligibility for and determination of retirement benefits, a vested member who is or has been employed as a correctional officer by the Iowa department of corrections and who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least thirty years of membership service as a correctional officer, may elect to receive, in lieu of the receipt of benefits under subsection 5 of this section, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a correctional officer, with benefits payable during the member's lifetime.

The Iowa department of corrections and the department of personnel shall jointly determine the applicable merit system job classifications of correctional officers.

The Iowa department of corrections shall pay to the department of personnel, from funds appropriated to the Iowa department of corrections, an actuarially determined amount sufficient to pay for the additional benefits provided in this subsection. The amount is in addition to the employer contributions required in section 97B.11.

11. Effective July 1, 1980, for each member who retired from the system prior to January 1, 1976, and for each member who retired from the system on or after January 1, 1976 under subsection 1 of this section, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1980 is increased as follows:

a. For the first ten years of service, fifty cents per month for each complete year of service.

b. For the eleventh through the twentieth years of service, one dollar per month for each complete year of service.

c. For the twenty-first through the thirtieth years of service, one dollar and fifty cents per month for each complete year of service.

d. The amount of monthly increase payable to a member under this subsection is also payable to a beneficiary and a contingent annuitant and shall be reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52 compared to the full monthly benefit provided in this section.

However, effective July 1, 1980 the monthly retirement allowance attributable to membership service and prior service of a member, contingent annuitant and beneficiary shall not be less than five dollars times the number of complete years of service of the member, not to exceed thirty, reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52, compared to the full monthly retirement benefit provided in this section.

12. Effective beginning July 1, 1982, for each member who retired from the system prior to January 1, 1976, and for each member who retired from the system on or after January 1, 1976 under subsection 1 of this section, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1982 is increased as follows:

a. For the first ten years of service, fifty cents per month for each complete year of service.

b. For the eleventh through the twentieth years of service, one dollar per month for each complete year of service.

c. For the twenty-first through the thirtieth years of service, one dollar and fifty cents per month for each complete year of service.

d. The amount of monthly increase payable to a member under this subsection is also payable to a beneficiary and a contingent annuitant and shall be reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52 compared to the full monthly benefit provided in this section.

13. a. A member who retired from the system between January 1, 1976, and June 30, 1982, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1994 and the November 1995 monthly benefit payments a retirement dividend equal to one hundred eighty-one percent of the monthly benefit payment the member received for the preceding June, or the most recently received benefit payment, whichever is greater. The retirement dividend does not affect the amount of a monthly benefit payment.

b. Each member who retired from the system between July 4, 1953, and December 31, 1975, or a contingent annuitant or beneficiary of such a mem-

ber, shall receive with the November 1994 and the November 1995 monthly benefit payments a retirement dividend equal to two hundred thirty-six percent of the monthly benefit payment the member received for the preceding June, or the most recently received benefit payment, whichever is greater. The retirement dividend does not affect the amount of a monthly benefit payment.

c. Notwithstanding the determination of the amount of a retirement dividend under paragraph "a", "b", "d", or "f", a retirement dividend shall not be less than twenty-five dollars.

d. A member who retired from the system between July 1, 1982, and June 30, 1986, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1994 and the November 1995 monthly benefit payments a retirement dividend equal to forty-nine percent of the monthly benefit payment the member received for the preceding June, or the most recently received benefit payment, whichever is greater. The retirement dividend does not affect the amount of a monthly benefit payment.

e. If the member dies on or after July 1 of the dividend year but before the payment date, the full amount of the retirement dividend for that year shall be paid to the designated beneficiary. If there is no beneficiary designated by the member, the department shall pay the dividend to the member's estate. The beneficiary, or the representative of the member's estate, must apply for the dividend within two years after the dividend is payable or the dividend is forfeited.

f. A member who retired from the system between July 1, 1986, and June 30, 1990, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1996 and the November 1997 monthly benefit payments a retirement dividend in an amount determined by the general assembly. The retirement dividend does not affect the amount of a monthly benefit payment.

14. Notwithstanding other provisions of this chapter, a member who is or has been employed by the office of disaster services as an airport fire fighter who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as an airport fire fighter, may elect to receive, in lieu of the receipt of any benefits under subsection 5 of this section, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as an airport fire fighter, with benefits payable during the member's lifetime.

An airport fire fighter who retires on or after July 1, 1986, and before July 1, 1988, and has not completed twenty-five years of membership service as required under this subsection is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as an airport fire fighter multiplied by a fraction of years of service as an airport fire fighter. For the purpose of this subsection, "*fraction of years of ser-*

vice" means a number, not to exceed one, equal to the sum of the years of membership service as an airport fire fighter, divided by twenty-five years. On or after July 1, 1986, if the airport fire fighter has not reached sixty years of age at retirement, the monthly retirement allowance shall be reduced by five-tenths of one percent per month for each month that the airport fire fighter's retirement precedes the date on which the airport fire fighter attains sixty years of age.

The employer and each employee eligible for benefits under this subsection shall annually contribute an actuarially determined amount specified by the department, as a percentage of covered wages, that is necessary to pay for the additional benefits provided by this subsection. The annual contribution in excess of the employer and employee contributions required in section 97B.11 shall be paid by the employer and the employee in the same proportion that the employer and employee contributions are made under section 97B.11.

There is appropriated from the general fund of the state to the department from funds not otherwise appropriated an amount sufficient to pay the employer share of the cost of the additional benefits provided in this subsection.

15. In lieu of the monthly benefit computed under subsections 1 and 3 as applicable, or subsection 5:

a. For each active or inactive vested member retiring on or after July 1, 1988, and before July 1, 1990, who is at least fifty-five years of age and has completed at least thirty years of membership service and prior service, and for which the sum of the number of years of membership service and prior service and the member's age in years as of the member's last birthday equals or exceeds ninety-two, a monthly benefit shall be computed which is equal to one-twelfth of fifty percent of the three-year average covered wage of the member.

b. For each active or inactive vested member retiring on or after July 1, 1990, who is at least fifty-five years of age and for which the sum of the number of years of membership service and prior service and the member's age in years as of the member's last birthday equals or exceeds ninety-two, a monthly benefit shall be computed which is equal to one-twelfth of the same percentage of the three-year average covered wage of the member as is provided in subsection 5.

16. a. Notwithstanding other provisions of this chapter:

(1) A member who is or has been employed in a protection occupation who retires on or after July 1, 1988, and before July 1, 1990, and at the time of retirement is at least fifty-five years of age and has completed at least twenty-five years of membership service in a protection occupation, may elect to receive in lieu of the receipt of any benefits under subsection 5 or 15, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a member who has been employed in a protection occupation, with benefits payable during the member's lifetime.

(2) A member who is or has been employed in a protection occupation who retires on or after July 1, 1990, and at the time of retirement is at least fifty-five years of age and has completed at least twenty-five years of membership service in a protection occupation, may elect to receive in lieu of the receipt of any benefits under subsection 5 or 15, a monthly retirement allowance equal to one-twelfth of fifty-two percent of the member's three-year average covered wage as a member who has been employed in a protection occupation, with benefits payable during the member's lifetime.

(3) Commencing July 1, 1991, the department shall increase the percentage multiplier of the three-year average covered wage as provided in subsection 5, paragraph "b", until reaching sixty percent of the three-year average covered wage.

(4) The years of membership service required under this paragraph include membership service as a sheriff or deputy sheriff and membership service as an employee in a protection occupation under paragraph "d", subparagraph (2). The years of membership service required under this paragraph also include membership service as an airport fire fighter employed by the military division of the department of public defense.

b. (1) Notwithstanding other provisions of this chapter:

(a) A member who retires from employment as a county sheriff or deputy sheriff who retires on or after July 1, 1988, and before July 1, 1990, and at the time of retirement is at least fifty-five years of age and has completed at least twenty-two years of membership service, may elect to receive in lieu of the receipt of any benefits under subsection 5 or 15, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a member, with benefits payable during the member's lifetime.

(b) A member who retires from employment as a county sheriff or deputy sheriff who retires on or after July 1, 1990, or a member who is or has been employed as a county sheriff or deputy sheriff who retires on or after July 1, 1994, and at the time of retirement is at least fifty-five years of age and has completed at least twenty-two years of membership service, may elect to receive in lieu of the receipt of any benefits under subsection 5 or 15, a monthly retirement allowance equal to one-twelfth of the same percentage of the member's three-year average covered wage as is provided in paragraph "a", with benefits payable during the member's lifetime.

(c) The years of membership service required under this subparagraph shall include membership service as a sheriff or deputy sheriff and membership service under employment in a protection occupation included in paragraph "d", subparagraph (2).

(d) For the purposes of this subsection, "*sheriff*" means a county sheriff as defined in section 39.17 and "*deputy sheriff*" means a deputy sheriff appointed pursuant to section 341.1 prior to July 1, 1981, or section 331.903 on or after July 1, 1981.

(2) Notwithstanding other provisions of this chapter:

(a) A member who is an airport fire fighter employed by the military division of the department of public defense or has been employed as an airport fire fighter by the military division of the department of public defense who retires on or after July 1, 1994, and at the time of retirement is at least fifty-five years of age and has completed at least twenty-two years of membership service, may elect to receive in lieu of the receipt of any benefits under subsection 5 or 15, a monthly retirement allowance equal to one-twelfth of the same percentage of the member's three-year average covered wage as is provided in paragraph "a", with benefits payable during the member's lifetime.

(b) The years of membership service required under this subparagraph shall include membership service as an airport fire fighter, regardless of whether the service occurred prior to the inclusion of airport fire fighters under this paragraph, and the inclusion of that service shall not affect the contribution rates paid by the member or the employer under this subsection.

(c) For the purposes of this subsection, "*airport fire fighter*" means an airport fire fighter employed by the military division of the department of public defense.

c. A member covered under this subsection who retires on or after July 1, 1988, and before July 1, 1990, and has not completed the twenty-five years of membership service required under paragraph "a", or twenty-two years of membership service required under paragraph "b", is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a member employed in a protection occupation, or as a sheriff or deputy sheriff, multiplied by a fraction of years of service.

A member covered under this subsection who retires on or after July 1, 1990, and has not completed the twenty-five years of membership service required under paragraph "a", or twenty-two years of membership service required under paragraph "b", is eligible to receive a monthly retirement allowance equal to one-twelfth of the same percentage of the member's three-year average covered wage as is provided in paragraph "a", multiplied by a fraction of years of service.

For the purpose of this subsection, "*fraction of years of service*" means a number, not to exceed one, equal to the sum of the years of membership service for a member retiring in a protection occupation, divided by twenty-five years, or the sum of the years of membership service for a member retiring as a sheriff or deputy sheriff or airport fire fighter divided by twenty-two years.

d. For the purposes of this subsection, "*a member employed in a protection occupation*" includes all of the following:

(1) A conservation peace officer employed under section 456A.13.

(2) A marshal in a city not covered under chapter 400 or a fire fighter or police officer of a city not participating in the retirement systems established in chapter 410 or 411.

(3) A correctional officer or correctional supervisor employed by the Iowa department of corrections, and any other employee of that department whose primary purpose is, through ongoing direct inmate contact, to enforce and maintain discipline, safety, and security within a correctional facility.

(4) Reserved.

(5) An airport safety officer employed under chapter 400 by an airport commission in a city of one hundred thousand population or more.

(6) Reserved.

(7) An employee of the state department of transportation who is designated as a "peace officer" by resolution under section 321.477, but only if the employee retires on or after July 1, 1990. For purposes of this subparagraph, service as a traffic weight officer employed by the highway commission prior to the creation of the state department of transportation or as a peace officer employed by the Iowa state commerce commission prior to the creation of the state department of transportation shall be included in computing the employee's years of membership service.

(8) A fire prevention inspector peace officer employed by the department of public safety prior to July 1, 1994, who does not elect coverage under the Iowa department of public safety peace officers' retirement, accident and disability system, as provided in section 97B.42B.

(9) An employee of a judicial district department of correctional services who is employed as a probation officer III or a parole officer III.

e. Annually, the department of personnel shall actuarially determine the cost of the additional benefits provided for members covered under paragraph "a" and the cost of the additional benefits provided for members covered under paragraph "b" as percents of the covered wages of the employees covered by this subsection. Sixty percent of the cost shall be paid by the employers of employees covered under this subsection and forty percent of the cost shall be paid by the employees. The employer and employee contributions required under this paragraph are in addition to the contributions paid under section 97B.11.

f. For the fiscal year commencing July 1, 1988, and each succeeding fiscal year, there is appropriated from the state fish and game protection fund to the department of personnel the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under paragraph "d", subparagraph (1).

g. Annually, during each fiscal year commencing with the fiscal year beginning July 1, 1988, each applicable city shall pay to the department of personnel the amount necessary to pay the employer share of the cost of the additional benefits provided to employees of that city covered under paragraph "d", subparagraphs (2) and (5).

h. Annually, during each fiscal year commencing with the fiscal year beginning July 1, 1988, each county shall pay to the department of personnel the amount necessary to pay the employer share of the cost of the additional benefits provided to sheriffs and deputy sheriffs.

i. For the fiscal year commencing July 1, 1988, and each succeeding fiscal year, the department of corrections shall pay to the department of personnel from funds appropriated to the Iowa department of corrections, the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under paragraph "d", subparagraph (3).

j. For the fiscal year commencing July 1, 1990, and each succeeding fiscal year, the state department of transportation shall pay to the department of personnel, from funds appropriated to the state department of transportation from the road use tax fund and the primary road fund, the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under paragraph "d", subparagraph (7).

k. For the fiscal year commencing July 1, 1994, and each succeeding fiscal year, each judicial district department of correctional services shall pay to the department of personnel from funds appropriated to that judicial district department of correctional services, the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under paragraph "d", subparagraph (9).

l. For the fiscal year commencing July 1, 1994, and each succeeding fiscal year, there is appropriated from the general fund of the state to the department of personnel, from funds not otherwise appropriated, an amount necessary to pay the employer share of the cost of the additional benefits provided to airport fire fighters pursuant to paragraph "b", subparagraph (2).

95 Acts, ch 102, §5-7
1995 amendments to subsections 5 and 13 apply retroactively to January 1, 1995; 95 Acts, ch 102, §11
Subsection 5, paragraph b, unnumbered paragraph 5 amended
Subsection 13, paragraph c amended
Subsection 13, NEW paragraph f

97B.51 Optional allowance.

Each member has the right prior to the member's retirement date to elect to have the member's retirement allowance payable under one of the options set forth in this section in lieu of the retirement allowance otherwise payable to the member upon retirement under the retirement system. The amount of the optional retirement allowance shall be the actuarial equivalent of the amount of the retirement allowance otherwise payable to the member. The member shall make an election by written request to the department and the election is subject to the approval of the department. If the member is married, election of an option under this section requires the written acknowledgement of the member's spouse.

1. A member may elect to receive a decreased retirement allowance during the member's lifetime

and have the decreased retirement allowance (or a designated fraction thereof) continued after the member's death to another person, called a contingent annuitant, during the lifetime of the contingent annuitant. The member cannot change the contingent annuitant after the member's retirement. In case of the election of a contingent annuitant, no death benefits, as might otherwise be provided by this chapter, will be payable upon the death of either the member or the contingent annuitant after the member's retirement.

2. The election by a member of the option stated under subsection 1 of this section shall be null and void if the member dies prior to the member's first month of entitlement.

3. A member who had elected to take the option stated in subsection 1 of this section may, at any time prior to retirement, revoke such an election by written notice to the department.

4. A member may elect to receive an increased retirement allowance during the member's lifetime with no death benefit after the member's retirement date.

5. At retirement, a member may designate that upon the member's death, a specified amount of money shall be paid to a named beneficiary, and the member's monthly retirement allowance shall be reduced by an actuarially determined amount to provide for the lump sum payment. The amount designated by the member must be in thousand dollar increments, and the amount designated shall not lower the monthly retirement allowance of the member by more than one-half the amount payable under section 97B.49, subsection 1 or 5. A member may designate a different beneficiary if the original named beneficiary predeceases the member.

6. A member may elect to receive a decreased retirement allowance during the member's lifetime with provision that in event of the member's death during the first one hundred twenty months of retirement, monthly payments of the member's decreased retirement allowance shall be made to the member's beneficiary until a combined total of one hundred twenty monthly payments have been made to the member and the member's beneficiary. A member may designate a different beneficiary if the original named beneficiary predeceases the member.

95 Acts, ch 102, §8
1995 amendments to subsection 2 apply retroactively to January 1, 1995;
95 Acts, ch 102, §11
Subsection 2 amended

97B.52 Payment to beneficiary.

1. If a member dies prior to the member's first month of entitlement, the accumulated contributions of the member at the date of death plus the product of an amount equal to the highest year of covered wages of the deceased member and the number of years of membership service divided by thirty shall be paid to the member's beneficiary in a lump sum payment. However, a lump sum payment made to a beneficiary under this subsection due to the death of a member shall not be less than the amount that

would have been payable on the death of the member on June 30, 1984, under this subsection as it appeared in the 1983 Code.

Effective July 1, 1978, a method of payment under this subsection filed with the department by a member does not apply.

2. If a member dies on or after the first day of the member's first month of entitlement, the excess, if any, of the accumulated contributions by the member as of said date, over the total monthly retirement allowances received by the member under the retirement system will be paid to the member's beneficiary unless the retirement allowance is then being paid in accordance with section 97B.48A or with section 97B.51, subsection 1, 4, 5, or 6.

3. *a.* Other than as provided in subsections 1 and 2 of this section, or section 97B.51, all rights to any benefits under the retirement system shall cease upon the death of a member.

b. If a death benefit is due and payable, interest shall continue to accumulate through the month preceding the month in which payment is made to the designated beneficiary, heirs at law, or the estate unless the payment of the death benefit is delayed because of a dispute between alleged heirs, in which case the benefit due and payable shall be placed in a noninterest bearing escrow account until the beneficiary is determined in accordance with this section. In order to receive the death benefit, the beneficiary, heirs at law, or the estate, or any other third-party payee, must apply to the department within two years of the member's death.

4. If the department cannot locate the beneficiary within eighteen months following the member's death and receipt of verification that a certified letter with return receipt requested, addressee only, has been mailed to the beneficiary, the department shall pay to the estate of the deceased member the amount otherwise designated to be received by the beneficiary. If a beneficiary is known to exist but cannot be notified, the department shall not pay the death benefits to the estate.

5. Following written notification to the department, a beneficiary of a deceased member may waive current and future rights to payments to which the beneficiary would otherwise be entitled under sections 97B.51 and this section. Upon receipt of the waiver, the department shall pay to the estate of the deceased member the amount designated to be received by the beneficiary.

6. If a member has not filed a designation of beneficiary with the department, the death benefit is payable to the member's estate. If no designation has been filed and an estate is not probated, the death benefit shall be paid to the surviving spouse, if any. If no designation has been filed, no estate has been probated, and there is no surviving spouse, the death benefit shall be paid to the heirs. Otherwise, the death benefit shall remain in the fund.

97B.52A Eligibility for benefits — bona fide retirement.

1. Effective January 1, 1995, a member has a bona fide retirement when the member terminates all employment covered under the chapter or formerly covered under the chapter pursuant to section 97B.42, files a completed application for benefits form with the department, survives into the month for which benefits are first payable, and does not return to employment as defined in this chapter until the member has qualified for no fewer than four calendar months of retirement benefits.

2. A member may commence receiving retirement benefits under this chapter upon satisfying eligibility requirements. However, a retired member who commences receiving a retirement allowance but returns to employment before qualifying for no fewer than four calendar months of retirement benefits does not have a bona fide retirement and any retirement allowance received by such a member must be returned to the system together with interest earned on the retirement allowance calculated at a rate determined by the department. Until the member has repaid the retirement allowance and interest, the department may withhold any future retirement allowance for which the member may qualify.

95 Acts, ch 102, §10

1995 amendments apply retroactively to January 1, 1995; 95 Acts, ch 102, §11

Section amended

97B.53 Termination of employment — refund options.

Membership in the retirement system, and all rights to the benefits under the system, will cease upon a member's termination of employment with the employer prior to the member's retirement, other than by death, and upon receipt by the member of the member's accumulated contributions.

1. Upon the termination of employment with the employer prior to retirement other than by death of a member, the accumulated contributions by the member at the date of the termination may be paid to the member upon application, except as provided in subsections 2, 5, and 6.

2. If a vested member's employment is terminated prior to the member's retirement, other than by death, the member may receive a monthly retirement allowance commencing on the first day of the month in which the member attains the age of sixty-five years, if the member is then alive, or, if the member so elects in accordance with section 97B.47, commencing on the first day of the month in which the member attains the age of fifty-five or any month thereafter prior to the date the member attains the age of sixty-five years, and continuing on the first day of each month thereafter during the member's lifetime, provided the member does not receive prior to the date the member's retirement allowance is to commence a refund of accumulated contributions under any of the provisions of this chapter. The amount of each such monthly retirement allowance shall be determined as provided in either section

95 Acts, ch 102, §9

1995 amendments to subsections 1 and 2 apply retroactively to January 1, 1995; 95 Acts, ch 102, §11

Subsections 1 and 2 amended

97B.49 or in section 97B.50, whichever is applicable.

3. The accumulated contributions of a terminated, vested member shall be credited with interest, including interest dividends, in the manner provided in section 97B.70. Interest and interest dividends shall be credited to the accumulated contributions of members who terminate service and subsequently become vested in accordance with section 97B.70. However, the department shall not implement the amendments to this subsection or to subsection 6, unnumbered paragraph 1, or to subsection 7, as enacted in 1994 Iowa Acts, chapter 1183, unless and until the department determines that the most recent annual actuarial valuation of the retirement system indicates that the employer and employee contribution rates in effect under section 97B.11 can absorb the amendments to these provisions of this section and the amendments to section 97B.41, subsection 12, and section 97B.70, by enacting a new subsection 4, contained in 1994 Iowa Acts, chapter 1183, after meeting the other established priorities of the system, as defined in section 97B.41, subsection 12. Until the amendments are implemented, the department shall continue to implement the provisions of section 97B.53, subsections 3 and 7, and section 97B.53, subsection 6, unnumbered paragraph 1, 1993 Code of Iowa.

4. A terminated, vested member has the right, prior to the commencement of the member's retirement allowance, to receive a refund of the member's accumulated contributions, and in the event of the death of the member prior to the commencement of the member's retirement allowance and prior to the receipt of any such refund the benefits of subsection 1 of section 97B.52 shall be paid.

5. A member has not terminated employment if the member accepts other covered employment within thirty days.

5A. Within sixty days after a member has been issued payment for a refund of the member's accumulated contributions, the member may repay the accumulated contributions plus interest that would have accrued, as determined by the department, and receive credit for membership service for the period covered by the refund payment.

5B. A member who does not withdraw the member's accumulated contributions upon termination of employment may at any time request the return of the member's accumulated contributions, but if the member receives a return of contributions the member has waived all claims for any other benefits and membership rights from the fund.

6. A member who terminates employment before the member is vested and who does not claim and receive a refund of the member's accumulated contributions within ten years of the date of termination shall, if the member makes claim for a refund more than ten years after the date of termination, be required to submit proof satisfactory to the department of the member's entitlement to the refund. Interest and interest dividends on the accumulated

contributions shall only be credited if provided in accordance with section 97B.70. The department is under no obligation to maintain the accumulated contribution accounts of such former members for more than ten years after their dates of termination.

A person who made contributions to the abolished system, who is entitled to a refund in accordance with the provisions of this chapter, and who has not claimed and received such a refund prior to January 1, 1964, shall, if the person makes a claim for refund after January 1, 1964, be required to submit proof satisfactory to the department of the person's entitlement to the refund. The department is under no obligation to maintain the contribution accounts of such persons after January 1, 1964.

7. Any member whose employment is terminated may elect to leave the member's accumulated contributions in the retirement fund.

8. If an employee hired to fill a permanent position terminates the employee's employment within six months from the date of employment, the employer may file a claim with the department for a refund of the funds contributed to the department by the employer for the employee.

94 Acts, ch 1183, §45-47, 97
1994 amendments to subsections 3, 6, and 7 effective July 1, 1995; 94 Acts, ch 1183, §97
Subsections 3 and 7 amended
Subsection 6, unnumbered paragraph 1 amended

97B.66 Former members.

A vested or retired member who was a member of the teachers insurance and annuity association-college retirement equity fund at any time between July 1, 1967 and June 30, 1971 and who became a member of the system on July 1, 1971, upon submitting verification of service and wages earned during the applicable period of service under the teachers insurance and annuity association-college retirement equity fund, may make employer and employee contributions to the system based upon the covered wages of the member and the covered wages and the contribution rates in effect for all or a portion of that period of service and receive credit for membership service under this system equivalent to the applicable period of membership service in the teachers insurance and annuity association-college retirement equity fund for which the contributions have been made. In addition, a member making employer and employee contributions because of membership in the teachers insurance and annuity association-college retirement equity fund under this section who was a member of the system on June 30, 1967 and withdrew the member's accumulated contributions because of membership on July 1, 1967 in the teachers insurance and annuity association-college retirement equity fund, may make employee contributions to the system for all or a portion of the period of service under the system prior to July 1, 1967. A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or, effective upon the

date that the department determines that the amendments to this paragraph and unnumbered paragraph 2 contained in 1994 Iowa Acts, chapter 1183, shall be implemented, for portions of the period of service, and if contributions are made for portions of the period of service, the contributions shall be in increments of one or more years, as long as the increments represent full years and not a portion of a year. However, the department shall not implement the amendments to this paragraph or unnumbered paragraph 2, as enacted in 1994 Iowa Acts, chapter 1183, unless and until the department determines that the most recent annual actuarial valuation of the retirement system indicates that the employer and employee contribution rates in effect under section 97B.11 can absorb the amendments to this paragraph and unnumbered paragraph 2 and to section 97B.72, unnumbered paragraphs 1 and 2, section 97B.72A, subsection 1, unnumbered paragraph 1, section 97B.73A, unnumbered paragraph 1, and section 97B.74, unnumbered paragraphs 1 and 2, contained in 1994 Iowa Acts, chapter 1183, after meeting the other established priority of the system. Until the amendments are implemented, the department shall continue to implement the provisions of section 97B.66, unnumbered paragraphs 1 and 2, Code Supplement 1993. As used in this section, unless the context otherwise requires, "other established priority of the system" means that commencing January 1 following the most recent annual actuarial valuation of the system, the department has increased the covered wage limitation from the previous year by three thousand dollars, in accordance with section 97B.41, subsection 20, paragraph "b", subparagraph (11).

The contributions paid by the vested or retired member shall be equal to the accumulated contributions as defined in section 97B.41, subsection 2, by the member for the applicable period of service, and the employer contribution for the applicable period of service under the teachers insurance and annuity association-college retirement equity fund, that would have been or had been contributed by the vested or retired member and the employer, if applicable, plus interest on the contributions that would have accrued for the applicable period from the date the previous applicable period of service commenced under this system or from the date the service of the member in the teachers insurance and annuity association-college retirement equity fund commenced to the date of payment of the contributions by the member equal to two percent plus the interest dividend rate applicable for each year.

However, effective January 1, 1994, the department shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

97B.70 Interest and dividends to members.

Interest at two percent per annum and interest dividends declared by the department shall be credited to the member's contributions and the employer's contributions to become part of the accumulated contributions thereby.

1. The average rate of interest earned shall be determined upon the following basis:

a. Investment income shall include interest and cash dividends on stock.

b. Investment income shall be accounted for on an accrual basis.

c. Capital gains and losses, realized or unrealized, shall not be included in investment income.

d. Mean assets shall include fixed income investments valued at cost or on an amortized basis, and common stocks at market values or cost, whichever is lower.

e. The average rate of earned interest shall be the quotient of the investment income and the mean assets of the retirement fund.

2. The interest dividend shall be determined within sixty days after the end of each calendar year as follows:

The dividend rate for a calendar year shall be the excess of the average rate of interest earned for the year over the statutory two percent rate plus twenty-five hundredths of one percent. The average rate of interest earned and the interest dividend rate in percent shall be calculated to the nearest one hundredth, that is, to two decimal places.

3. Interest and interest dividends shall be credited to the contributions of active members and inactive vested members until the first of the month coinciding with or next following the member's retirement date.

4. Effective upon the date that the department determines that this subsection shall be implemented, interest and interest dividends shall be credited to the contributions of a person who leaves the contributions in the retirement fund upon termination from covered employment prior to achieving vested status, but who subsequently achieves vested status. The interest and interest dividends shall be credited to the contributions commencing either upon the date that the department determines that this subsection shall be implemented, or the date on which the person becomes a vested member, whichever is later. Interest and interest dividends shall cease upon the first of the month coinciding with or next following the person's retirement date. If the department no longer maintains the accumulated contribution account of the person pursuant to section 97B.53, but the person submits satisfactory proof to the department that the person did make the contributions, the department shall credit interest and interest dividends in the manner provided in this subsection. However, the department shall not implement this subsection, unless and until the department determines that the most recent annual actuarial valuation of the retirement system indi-

94 Acts, ch 1183, §51, 97

1994 amendments to unnumbered paragraphs 1 and 2 effective July 1, 1995; 94 Acts, ch 1183, §97

Unnumbered paragraphs 1 and 2 amended

cates that the employer and employee contribution rates in effect under section 97B.11 can absorb the enactment of this subsection and the amendments to section 97B.41, subsection 12, section 97B.53, subsections 3 and 7, and section 97B.53, subsection 6, unnumbered paragraph 1, contained in 1994 Iowa Acts, chapter 1183, after meeting the other established priorities of the system, as defined in section 97B.41, subsection 12.

94 Acts, ch 1183, §52, 97
 Subsection 4 effective July 1, 1995; 94 Acts, ch 1183, §97
 NEW subsection 4

97B.72 Members of general assembly — appropriation.

Persons who are members of the Seventy-first General Assembly or a succeeding general assembly who submit proof to the department of membership in the general assembly during any period beginning July 4, 1953, may make contributions to the system for all or a portion of the period of service in the general assembly, and receive credit for the applicable period for which contributions are made. The contributions made by the member shall be equal to the accumulated contributions as defined in section 97B.41, subsection 2, which would have been made if the member of the general assembly had been a member of the system during the applicable period. The proof of membership in the general assembly and payment of accumulated contributions shall be transmitted to the department. A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or, effective upon the date that the department determines that the amendments to this paragraph and unnumbered paragraph 2 contained in 1994 Iowa Acts, chapter 1183, shall be implemented, for portions of the period of service, and if contributions are made for portions of the period of service, the contributions shall be in increments of one or more years, as long as the increments represent full years and not a portion of a year. However, the department shall not implement the amendments to this paragraph or unnumbered paragraph 2, as enacted in 1994 Iowa Acts, chapter 1183, unless and until the department determines that the most recent annual actuarial valuation of the retirement system indicates that the employer and employee contribution rates in effect under section 97B.11 can absorb the amendments to this paragraph and unnumbered paragraph 2 and to section 97B.66, unnumbered paragraphs 1 and 2, section 97B.72A, subsection 1, unnumbered paragraph 1, section 97B.73A, unnumbered paragraph 1, and section 97B.74, unnumbered paragraphs 1 and 2, contained in 1994 Iowa Acts, chapter 1183, after meeting the other established priority of the system, as defined in section 97B.66. Until the amendments are implemented, the department shall continue to implement the provisions of section 97B.72, unnumbered paragraphs 1 and 2, Code Supplement 1993.

There is appropriated from moneys available to the general assembly under section 2.12 an amount suf-

ficient to pay the contributions of the employer based on the period of service for which the members have paid accumulated contributions in an amount equal to the contributions which would have been made if the members of the general assembly who made employee contributions had been members of the system during the applicable period of service in the general assembly plus two percent interest plus interest dividends for all completed calendar years and for any completed calendar year for which the interest dividend has not been declared and for completed months of partially completed calendar years at two percent interest plus the interest dividend rate calculated for the previous year, compounded annually, from the end of the calendar year in which contribution was made to the first day of the month of such date.

However, effective January 1, 1994, the department shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

94 Acts, ch 1183, §53, 97
 1994 amendments to unnumbered paragraphs 1 and 2 effective July 1, 1995; 94 Acts, ch 1183, §97
 Unnumbered paragraphs 1 and 2 amended

97B.72A Former legislative service — appropriation.

1. An active or vested member of the system who was a member of the general assembly prior to July 1, 1988, may make contributions to the system for all or a portion of the period of service in the general assembly. The contributions made by the member shall be equal to the accumulated contributions as defined in section 97B.41, subsection 2, which would have been made if the member of the general assembly had been a member of the system during the applicable period of service in the general assembly. A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or for portions of the period of service, and, effective upon the date that the department determines that the amendments to this paragraph contained in 1994 Iowa Acts, chapter 1183, shall be implemented, if contributions are made for portions of the period of service, the contributions shall be in increments of one or more years, as long as the increments represent full years and not a portion of a year. The member of the system shall submit proof to the department of membership in the general assembly. The department shall credit the member with the period of membership service for which contributions are made. However, the department shall not implement the amendments to this paragraph, as enacted in 1994 Iowa Acts, chapter 1183, unless and until the department determines that the most recent annual actuarial valuation of the retirement system indicates that the employer and employee contribution rates in effect under section 97B.11 can absorb the amendments to this paragraph and to section 97B.66, unnumbered paragraphs 1 and 2,

section 97B.72, unnumbered paragraphs 1 and 2, section 97B.73A, unnumbered paragraph 1, and section 97B.74, unnumbered paragraphs 1 and 2, contained in 1994 Iowa Acts, chapter 1183, after meeting the other established priority of the system, as defined in section 97B.66. Until the amendments are implemented, the department shall continue to implement the provisions of section 97B.72A, subsection 1, unnumbered paragraph 1, Code Supplement 1993.

There is appropriated from the general fund of the state to the department an amount sufficient to pay the contributions of the employer based on the period of service of members of the general assembly for which the member paid accumulated contributions under this section. The amount appropriated is equal to the employer contributions which would have been made if the members of the system who made employee contributions had been members of the system during the period for which they made employee contributions plus two percent interest plus the interest dividend rate applicable for each year compounded annually.

2. Effective January 1, 1994, however, the department shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

94 Acts, ch 1183, §54, 97

1994 amendments to subsection 1, unnumbered paragraph 1, effective July 1, 1995; 94 Acts, ch 1183, §97

Subsection 1, unnumbered paragraph 1 amended

97B.73A Part-time county attorneys.

A part-time county attorney may elect in writing to the department to make employee contributions to the system for the county attorney's previous service as a county attorney and receive credit for membership service in the system for the applicable period of service as a part-time county attorney for which employee contributions are made. The contributions paid by the member shall be equal to the accumulated contributions, as defined in section 97B.41, subsection 2, for the applicable period of membership service. A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or, effective upon the date that the department determines that the amendments to this paragraph contained in 1994 Iowa Acts, chapter 1183, shall be implemented, for portions of the period of service, and if contributions are made for portions of the period of service, the contributions shall be in increments of one or more years, as long as the increments represent full years and not a portion of a year. A member who elects to make contributions under this section shall notify the county board of supervisors of the member's election, and the county board of supervisors shall pay to the department the employer contributions that would have been contributed by the employer under section 97B.11 plus interest on the contributions that would have accrued if the county attorney

had been a member of the system for the applicable period of service. However, the department shall not implement the amendments to this paragraph, as enacted in 1994 Iowa Acts, chapter 1183, unless and until the department determines that the most recent annual actuarial valuation of the retirement system indicates that the employer and employee contribution rates in effect under section 97B.11 can absorb the amendments to this paragraph and to section 97B.66, unnumbered paragraphs 1 and 2, section 97B.72, unnumbered paragraphs 1 and 2, section 97B.72A, subsection 1, unnumbered paragraph 1, and section 97B.74, unnumbered paragraphs 1 and 2, contained in 1994 Iowa Acts, chapter 1183, after meeting the other established priority of the system, as defined in section 97B.66. Until the amendments are implemented, the department shall continue to implement the provisions of section 97B.73A, unnumbered paragraph 1, Code Supplement 1993.

Effective July 1, 1988, a member eligible for an increased retirement allowance because of the payment of contributions under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which written notice was submitted to the department.

However, effective January 1, 1994, the department shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

94 Acts, ch 1183, §57, 97

1994 amendments to unnumbered paragraph 1 effective July 1, 1995; 94 Acts, ch 1183, §97

Unnumbered paragraph 1 amended

97B.74 Reinstatement as a vested member (buy-back).

An active, vested, or retired member who was a member of the system at any time on or after July 4, 1953, and who received a refund of the member's contributions for that period of membership service, may elect in writing to the department to make contributions to the system for all or a portion of the period of membership service for which a refund of contributions was made, and receive credit for the period of membership service for which contributions are made. The contributions repaid by the member for such service shall be equal to the accumulated contributions, as defined in section 97B.41, subsection 2, received by the member for the applicable period of membership service plus interest on the accumulated contributions for the applicable period from the date of receipt by the member to the date of repayment equal to two percent plus the interest dividend rate applicable for each year compounded annually.

An active member must have at least one quarter's reportable wages on file and have membership service, including that period of membership service for which a refund of contributions was made, sufficient

to give the member vested status. A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or, effective upon the date that the department determines that the amendments to this paragraph and unnumbered paragraph 1 contained in 1994 Iowa Acts, chapter 1183, shall be implemented, for portions of the period of service, and if contributions are made for portions of the period of service, the contributions shall be in increments of one or more years, as long as the increments represent full years and not a portion of a year. However, the department shall not implement the amendments to this paragraph or unnumbered paragraph 1, as enacted in 1994 Iowa Acts, chapter 1183, unless and until the department determines that the most recent annual actuarial valuation of the retirement system indicates that the employer and employee contribution rates in effect under section 97B.11 can absorb the amendments to this paragraph and to unnumbered paragraph 1 and to section 97B.66, unnumbered paragraphs 1 and 2, section 97B.72, unnumbered paragraphs 1 and 2, section 97B.72A, subsection 1, unnumbered paragraph 1, and section

97B.73A, unnumbered paragraph 1, contained in 1994 Iowa Acts, chapter 1183, after meeting the other established priority of the system, as defined in section 97B.66. Until the amendments are implemented, the department shall continue to implement the provisions of section 97B.74, unnumbered paragraphs 1 and 2, Code Supplement 1993.

Effective July 1, 1988, a member eligible for an increased retirement allowance because of the payment of contributions under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which written notice was submitted to the department.

However, effective January 1, 1994, the department shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

94 Acts, ch 1183, §58, 97
1994 amendments to unnumbered paragraphs 1 and 2 effective July 1, 1995; 94 Acts, ch 1183, §97
Unnumbered paragraphs 1 and 2 amended

CHAPTER 99B

GAMES OF SKILL OR CHANCE, AND RAFFLES

99B.3 Amusement concessions.

1. A game of skill or game of chance is lawful when conducted by a person at an amusement concession, but only if all of the following are complied with:

a. The location where the game is conducted by the person has been authorized as provided in section 99B.4.

b. The person conducting the game has submitted a license application and a fee of fifty dollars for each game, and has been issued a license for the game, and prominently displays the license at the playing area of the game. A license is valid for a period of one year from the date of issue.

c. Gambling other than the licensed game is not conducted or engaged in at the amusement concession.

d. The game is posted and the cost to play the game does not exceed three dollars.

e. A prize is not displayed which cannot be won.

f. Cash prizes are not awarded and merchandise prizes are not repurchased.

g. The game is not operated on a build-up or pyramid basis.

h. The actual retail value of any prize does not exceed fifty dollars. If a prize consists of more than one item, unit, or part, the aggregate retail value of all items, units, or parts shall not exceed fifty dollars.

i. Concealed numbers or conversion charts are not used to play the game and the game is not designed or adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object target, block or object of the game must be attainable and possible to perform under the rules stated from the playing position of the player.

j. The game is conducted in a fair and honest manner.

2. It is lawful for an individual other than a person conducting the game to participate in a game of skill or game of chance conducted at an amusement concession, whether or not the amusement concession is conducted in compliance with subsection 1.

95 Acts, ch 163, §1
Subsection 1, paragraphs d and h amended

CHAPTER 99D

PARI-MUTUEL WAGERING

99D.7 Powers.

The commission shall have full jurisdiction over and shall supervise all race meetings governed by this chapter. The commission shall have the following powers and shall adopt rules pursuant to chapter 17A to implement this chapter:

1. To investigate applicants and determine the eligibility of applicants for a license and to select among competing applicants for a license the applicant which best serves the interests of the citizens of Iowa.

2. To identify occupations within the racing industry which require licensing and adopt standards for licensing the occupations including establishing fees for the occupational licenses. The fees shall be paid to the commission and used as required in section 99D.17.

3. To adopt standards under which all race meetings shall be held and standards for the facilities within which the race meetings shall be held.

4. To regulate the purse structure for race meetings including establishing a minimum purse.

5. To cooperate with the department of agriculture and land stewardship to establish and operate, or contract for, a laboratory and related facilities to conduct saliva, urine, and other tests on animals that are to run or that have run in races governed by this chapter.

6. To establish and provide for the disposition of fees for the testing of animals sufficient to cover the costs of the tests and to purchase the necessary equipment for the testing.

7. To enter the office, racetrack, facilities, or other places of business of a licensee to determine compliance with this chapter.

8. To investigate alleged violations of this chapter or the commission rules, orders, or final decisions and to take appropriate disciplinary action against a licensee or a holder of an occupational license for the violation, or institute appropriate legal action for enforcement, or both. Decisions by the commission are final agency actions pursuant to chapter 17A.

9. To authorize stewards, starters, and other racing officials to impose fines or other sanctions upon a person violating a provision of this chapter or the commission rules, orders, or final orders, including authorization to expel a tout, bookmaker, or other person deemed to be undesirable from the racetrack facilities.

10. To require the removal of a racing official, an employee of a licensee, or a holder of an occupational license, or employee of a holder of an occupational license for a violation of this chapter or a commission rule or engaging in a fraudulent practice.

11. To prevent an animal from racing if the commission or commission employees with cause believe the animal or its owner, trainer, or an employee of the owner or trainer is in violation of this chapter or commission rules.

12. To withhold payment of a purse if the outcome of a race is disputed or until tests are performed on the animals to determine if they were illegally drugged.

13. To provide for immediate determination of the disposition of a challenge by a racing official or representative of the commission by establishing procedures for informal hearings before a panel of stewards at a racetrack.

14. To require a licensee to file an annual balance sheet and profit and loss statement pertaining to the licensee's racing activities in this state, together with a list of the stockholders or other persons having any beneficial interest in the racing activities of each licensee.

15. To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records and other pertinent documents in accordance with chapter 17A, and to administer oaths and affirmations to the witnesses, when, in the judgment of the racing and gaming commission, it is necessary to enforce this chapter or the commission rules.

16. To keep accurate and complete records of its proceedings and to certify the records as may be appropriate.

17. To require all licensees to use a computerized totalizator system for calculating odds and payouts from the pari-mutuel wagering pool and to establish standards to insure the security of the totalizator system.

18. To revoke or suspend licenses and impose fines not to exceed one thousand dollars.

19. To require licensees to indicate in their racing programs those horses which are treated with the legal medication lasix or phenylbutazone. The program shall also indicate if it is the first or subsequent time that a horse is racing with lasix, or if the horse has previously raced with lasix and the present race is the first race for the horse without lasix following its use.

20. Notwithstanding any contrary provision in this chapter, to provide for interstate combined wagering pools related to simulcasting horse or dog races and all related interstate pari-mutuel wagering activities.

21. To cooperate with the gamblers assistance program administered by the department of human services to incorporate information regarding the gamblers assistance program and its toll-free telephone number in printed materials distributed by the commission. The commission may require licensees to have the information available in a conspicuous place as a condition of licensure.

22. To take any other action as may be reasonable or appropriate to enforce this chapter and the commission rules.

99D.8 Horse or dog racing licenses — applications.

A qualifying organization, as defined in section 513(d)(2)(C) of the Internal Revenue Code, as defined in section 422.3, exempt from federal income taxation under sections 501(c)(3), 501(c)(4), or 501(c)(5) of the Internal Revenue Code or a nonprofit corporation organized under the laws of this state, whether or not it is exempt from federal income taxation, which is organized to promote those purposes enumerated in section 99B.7, subsection 3, paragraph "b", or which regularly conducts an agricultural and educational fair or exposition for the promotion of the horse, dog, or other livestock breeding industries of the state, or an agency, instrumentality, or political subdivision of the state, may apply to the commission for a license to conduct horse or dog racing. The application shall be filed with the administrator of the commission at least sixty days before the first day of the horse race or dog race meeting which the organization proposes to conduct, shall specify the day or days when and the exact location where it proposes to conduct racing, and shall be in a form and contain information as the commission prescribes.

If any part of the net income of a licensee is determined to be unrelated business taxable income as defined in sections 511 through 514 of the Internal Revenue Code, or is otherwise taxable, the licensee shall be required to distribute such amount to political subdivisions in the state and organizations described in section 501(c)(3) of the Internal Revenue Code in the county in which the licensee operates.

An organization which meets the requirements of this section, as amended, on or before July 1, 1988, shall be considered to have met the requirements of this section on the date that its initial application was originally filed.

95 Acts, ch 176, §1

1995 amendments apply retroactively to January 1, 1995; 95 Acts, ch 176, §6

Unnumbered paragraphs 1 and 2 amended

99D.22 Native horses or dogs.

1. A licensee shall hold at least one race on each racing day limited to Iowa-foaled horses or Iowa-whelped dogs as defined by the department of agriculture and land stewardship using standards consistent with this section. However, if sufficient competition cannot be had among that class of horses or dogs on any day, another race for the day may be substituted. A sum equal to twelve percent of the purse won by an Iowa-foaled horse or Iowa-whelped dog shall be used to promote the horse and dog breeding industries. The twelve percent shall be withheld by the licensee from the breakage and shall be paid at the end of the race meeting to the state department of agriculture and land stewardship which in turn shall deposit it in a special fund to be known as the Iowa horse and dog breeders fund and pay it by December 31 of each calendar year to the breeder of the winning Iowa-foaled horse or Iowa-whelped dog. For the purposes of this section, the breeder of a thoroughbred horse shall be considered

to be the owner of the brood mare at the time the foal is dropped. The breeder of a quarter horse or standardbred horse shall be considered to be the owner of the mare at the time of breeding.

2. For the purposes of this chapter, the following shall be considered in determining if a horse is an Iowa-foaled thoroughbred horse, quarter horse, or standardbred horse:

a. All thoroughbred horses, quarter horses, or standardbred horses foaled in Iowa prior to January 1, 1985, which are registered by the jockey club, American quarter horse association, or United States trotting association as Iowa foaled shall be considered to be Iowa foaled.

b. After January 1, 1985, eligibility for brood mare residence shall be achieved by meeting at least one of the following rules:

(1) Thirty days residency until the foal is inspected, if in foal to a registered Iowa stallion.

(2) Thirty days residency until the foal is inspected for brood mares which are bred back to registered Iowa stallions.

(3) Continuous residency from December 31 until the foal is inspected if the mare was bred by other than an Iowa registered stallion and is not bred back to an Iowa registered stallion.

c. To be eligible for registration as an Iowa thoroughbred, quarter horse, or standardbred stallion, the following requirements shall be met:

(1) Stallion residency from January 1 through July 31 for the year of registration. However, horses going to stud for the first year shall be eligible upon registration with residency to continue through July 31.

(2) At least fifty-one percent of an Iowa registered stallion shall be owned by bona fide Iowa residents.

d. State residency shall not be required for owners of brood mares.

3. To facilitate the implementation of this section, the department of agriculture and land stewardship shall do all of the following:

a. Adopt standards to qualify thoroughbred, quarter horse, or standardbred stallions for Iowa breeding. A stallion shall stand for service in the state at the time of the foal's conception and shall not stand for service at any place outside the state during the calendar year in which the foal is conceived.

b. Provide for the registration of Iowa-foaled horses and that a horse shall not compete in a race limited to Iowa-foaled horses unless the horse is registered with the department of agriculture and land stewardship. The department may prescribe such forms as necessary to determine the eligibility of a horse.

c. The secretary of agriculture shall appoint investigators to determine the eligibility for registration of Iowa-foaled horses.

d. Adopt a schedule of fees to be charged to breeders of thoroughbreds, quarter horses, or standardbreds to administer this subsection.

4. To qualify for the Iowa horse and dog breeders fund, a dog shall have been whelped in Iowa and

raised for the first six months of its life in Iowa. In addition, the owner of the dog shall have been a resident of the state for at least two years prior to the whelping. The department of agriculture and land stewardship shall adopt rules and prescribe forms to bring Iowa breeders into compliance with residency requirements of dogs and breeders in this subsection.

95 Acts, ch 133, §1-7
 Subsections 1 and 4 amended
 Subsection 2, unnumbered paragraph 1 amended
 Subsection 2, paragraph a amended
 Subsection 2, paragraph c, unnumbered paragraph 1 amended
 Subsection 2, paragraph c, subparagraph (1) stricken and rewritten
 Subsection 3, paragraphs a and d amended

CHAPTER 99E

IOWA LOTTERY

Exceptions for 1995-1996 fiscal year; transfer to general fund; 95 Acts, ch 220, §15, 18

99E.9 Duties of the board and commissioner — contracts — rules.

1. The board and the commissioner shall supervise the lottery in order to produce the maximum amount of net revenues for the state in a manner which maintains the dignity of the state and the general welfare of the people.

2. Subject to the approval of the board, the commissioner may enter into contracts for the operation and marketing of the lottery, except that the board may by rule designate classes of contracts other than major procurements which do not require prior approval by the board. A major procurement shall be as the result of competitive bidding with the contract being awarded to the responsible vendor submitting the lowest and best proposal. However, before a contract for a major procurement is awarded, the division of criminal investigation of the department of public safety shall conduct a thorough background investigation of the vendor, any parent or subsidiary corporation of the vendor, all shareholders of five percent or more interest of the vendor or parent or subsidiary corporation of the vendor, and all officers and directors of the vendor or parent or subsidiary corporation of the vendor to whom the contract is to be awarded. The vendor shall submit to the division of criminal investigation appropriate investigation authorizations to facilitate this investigation. A contract for a major procurement awarded or entered into by the commissioner with an individual or business organization shall require that individual or business organization to establish a permanent office in this state. As used in this subsection, "major procurement" means consulting agreements and the major procurement contract with a business organization for the printing of tickets, or for purchase or lease of equipment or services essential to the operation of a lottery game.

3. Except as provided in paragraph "b", the board shall make rules in accordance with chapter 17A for implementing and enforcing this chapter. The rules shall include but are not limited to the following subject matters:

a. The fees charged for a license to sell lottery tickets or shares. Revenue received by the lottery

from license fees shall be transferred to the lottery fund immediately after the cost of processing license applications is deducted.

b. The types of lottery games to be conducted. Rules governing the operation of a class of games are subject to chapter 17A. However, rules governing the particular features of specific games within a class of games are not subject to chapter 17A. Such rules may include, but are not limited to, setting the name and prize structure of the game and shall be made available to the public prior to the time the games go on sale and shall be kept on file at the office of the commissioner. The board shall authorize instant lottery and on-line lotto games and may authorize the use of any type of lottery game that on May 3, 1985, has been conducted by a state lottery of another state in the United States, or any game that the board determines will achieve the revenue objectives of the lottery and is consistent with subsection 1. However, the board shall not authorize a game using an electronic computer terminal or other device if, upon winning a game, the terminal or device immediately dispenses coins or currency or a ticket, credit or token which is redeemable for cash or a prize. In a game utilizing instant tickets other than pull-tab tickets, each ticket in the game shall bear a unique consecutive serial number distinguishing it from every other ticket in the game, and each lottery number or symbol shall be accompanied by a confirming caption consisting of a repetition of a symbol or a description of the symbol in words. In the game other than an instant game which uses tangible evidence of participation, each ticket shall bear a unique serial number distinguishing it from every other ticket in the game.

c. The price of tickets or shares in the lottery, including but not limited to authorization of sales of tickets or shares at a discount for marketing purposes.

d. The number and size of the prizes on the winning tickets or shares, including but not limited to prizes of free tickets or shares in lottery games conducted by the lottery and merchandise prizes. The lottery division shall maintain and make available for public inspection at its offices during regular

business hours a detailed listing of the estimated number of prizes of each particular denomination that are expected to be awarded in any game that is on sale or the estimated odds of winning the prizes and, after the end of the claim period, shall maintain and make available a listing of the total number of tickets or shares sold in a game and the number of prizes of each denomination which were awarded.

e. The method of selecting the winning tickets or shares and the manner of payment of prizes to the holders of winning tickets or shares. The rules may provide for payment by the purchase of annuities in the case of prizes payable in installments. Lottery employees shall examine claims and shall not pay any prize for altered, stolen, or counterfeit tickets or shares nor tickets or shares which fail to meet validation rules established for a lottery game. A prize shall not be paid more than once. If the commissioner determines that more than one person is entitled to a prize, the sole remedy of the claimants is to receive an equal share in the single prize. The rules may provide for payment of prizes directly by the licensee.

f. The methods of validation of the authenticity of winning tickets or shares.

g. The frequency of selection of winning tickets or shares. Drawings shall be held in public. Drawings shall be witnessed by an independent certified public accountant. Equipment used to select winning tickets or shares or participants for prizes shall be examined by lottery division employees and an independent certified public accountant prior to and after each public drawing.

h. Requirements for eligibility for participation in runoff drawings, including but not limited to requirements for submission of evidence of eligibility.

i. The locations at which tickets or shares may be sold. The board may authorize the sale of tickets or shares on the premises of establishments which sell or serve alcoholic beverages, wine, or beer as defined in section 123.3.

j. The method to be used in printing and selling tickets or shares. An elected official's name shall not be printed on the tickets. The overall estimated odds of winning a prize in a given game shall be printed on each ticket if the games have either preprinted winners or fixed odds. Estimated odds of winning a prize are not required to be printed on tickets in lottery games of a pari-mutuel nature. As used in this paragraph, "*games of a pari-mutuel nature*" means a game in which the amount of the winnings and the odds of winning are determined by the number of participants in the game.

k. The issuing of licenses to sell tickets or shares. In addition to any other rules made regarding the qualifications of an applicant for a license, a person shall not be issued a license unless the person meets the criteria established in section 99E.16, subsection 7.

l. The compensation to be paid licensees including but not limited to provision for variable compensation based on sales volume or incentive considerations.

m. The form and type of marketing, informational, and educational material to be permitted. Marketing material and campaigns shall include the concept of investing in Iowa's economic development and show the economic development initiatives funded from lottery revenue.

n. Subject to section 99E.10, the apportionment of the annual revenues accruing from the sale of lottery tickets or shares and from other sources for the payment of prizes to the holders of winning tickets or shares and for the following:

(1) The payment of costs incurred in the operation and administration of the lottery and the lottery division, including the expenses of the lottery and the cost resulting from contracts entered into for consulting or operational services, or for marketing.

(2) Actual and necessary expenses of all audits performed pursuant to section 99E.20, subsection 3.

(3) Incentive programs for lottery licensees and lottery employees.

(4) Payment of compensation to licensees necessary to provide for the adequate availability of tickets, shares, or services to prospective buyers and for the convenience of the public.

(5) The purchase or lease of lottery equipment, tickets, and materials.

o. Requirement that a licensee either print or stamp the licensee's name and address on the back of each instant ticket, except pull-tab tickets.

4. The board and the commissioner may enter into written agreements or compacts with another state or states or one or more political subdivisions of another state or states for the operation, marketing, and promotion of a joint lottery or joint lottery games.

5. The board may authorize the commissioner to enter into written agreements with business entities for special lottery promotions in which, incident to the special lottery games, additional prizes, including annuities, may be purchased by the business entity and transferred to the lottery division for payment to qualifying holders of lottery tickets or shares.

6. If reasonably practical when the lottery division awards a contract under subsection 2, for the lease or purchase of a machine to be used in the conducting of a lottery game including, but not limited to, a machine used in lotto, the lottery division shall give preference to awarding the contract to a responsible vendor who manufactures the machines in the state, provided the costs and benefits to the lottery division are equal to those available from competing vendors.

If reasonably practical when the lottery division awards a contract under subsection 2, for the servicing of a machine to be used in the conducting of a lottery game including, but not limited to, a machine used in lotto, the lottery division shall give preference to a responsible vendor whose principal place of business is in Iowa, provided the costs and benefits to the lottery division are equal to those available from competing vendors.

7. In making decisions relating to the marketing or advertising of the Iowa lottery and the various

games offered, the board shall give consideration to marketing or advertising through Iowa-based advertising agencies and media outlets.

8. The Iowa lottery board shall cooperate with the gamblers assistance program administered by the department of human services to incorporate infor-

mation regarding the gamblers assistance program and its toll-free telephone number in printed materials distributed by the board.

95 Acts, ch 205, §35
NEW subsection 8

CHAPTER 99F

GAMBLING — EXCURSION BOATS AND RACETRACKS

99F.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *Adjusted gross receipts* means the gross receipts less winnings paid to wagerers.

2. *Applicant* means any person applying for an occupational license or applying for a license to operate an excursion gambling boat, or the officers and members of the board of directors of a qualified sponsoring organization located in Iowa applying for a license to conduct gambling games on an excursion gambling boat.

3. *Cheat* means to alter the selection of criteria which determine the result of a gambling game or the amount or frequency of payment in a gambling game.

4. *Commission* means the state racing and gaming commission created under section 99D.5.

5. *Distributor* means a person who sells, markets, or otherwise distributes gambling games or implements of gambling which are usable in the lawful conduct of gambling games pursuant to this chapter, to a licensee authorized to conduct gambling games pursuant to this chapter.

6. *Dock* means the location where an excursion gambling boat moors for the purpose of embarking passengers for and disembarking passengers from a gambling excursion.

7. *Excursion gambling boat* means a self-propelled excursion boat on which lawful gambling is authorized and licensed as provided in this chapter.

8. *Gambling excursion* means the time during which gambling games may be operated on an excursion gambling boat whether docked or during a cruise.

9. *Gambling game* means any game of chance authorized by the commission. However, for racetrack enclosures, *gambling game* does not include table games of chance or video machines. *Gambling game* does not include sports betting.

10. *Gross receipts* means the total sums wagered under this chapter.

11. *Holder of occupational license* means a person licensed by the commission to perform an occupation which the commission has identified as requiring a license to engage in excursion boat gambling in Iowa.

12. *Licensee* means any person licensed under section 99F.7.

13. *Manufacturer* means a person who designs, assembles, fabricates, produces, constructs, or who otherwise prepares a product or a component part of a product of any implement of gambling usable in the lawful conduct of gambling games pursuant to this chapter.

14. *Qualified sponsoring organization* means a nonprofit corporation organized under the laws of this state, whether or not it is exempt from federal income taxation, or a person or association that can show to the satisfaction of the commission that the person or association is eligible for exemption from federal income taxation under section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code as defined in section 422.3.

15. *Racetrack enclosure* means the grandstand, clubhouse, turf club, or other areas of a licensed racetrack which an individual may enter only upon payment of an admission fee or upon presentation of authorized credentials. *Racetrack enclosure* also means any additional areas designated by the commission.

95 Acts, ch 176, §2
1995 amendment to subsection 14 applies retroactively to January 1, 1995; 95 Acts, ch 176, §6
Subsection 14 amended

99F.6 Requirements of applicant — fee — penalty.

1. A person shall not be issued a license to conduct gambling games on an excursion gambling boat or a license to operate an excursion gambling boat under this chapter, an occupational license, a distributor license, or a manufacturer license unless the person has completed and signed an application on the form prescribed and published by the commission. The application shall include the full name, residence, date of birth and other personal identifying information of the applicant that the commission deems necessary. The application shall also indicate whether the applicant has any of the following:

- A record of conviction of a felony.
- An addiction to alcohol or a controlled substance.
- A history of mental illness.

2. An applicant shall submit pictures, fingerprints, and descriptions of physical characteristics to the commission in the manner prescribed on the application forms.

3. The commission shall charge the applicant a fee set by the department of public safety, division of criminal investigation and bureau of identification, to defray the costs associated with the search and classification of fingerprints required in subsection 2 and background investigations conducted by agents of the division of criminal investigation. This fee is in addition to any other license fee charged by the commission.

4. *a.* Before a license is granted, the division of criminal investigation of the department of public safety shall conduct a thorough background investigation of the applicant for a license to operate a gambling game operation on an excursion gambling boat. The applicant shall provide information on a form as required by the division of criminal investigation. A qualified sponsoring organization licensed to operate gambling games under this chapter shall distribute the receipts of all gambling games, less reasonable expenses, charges, taxes, fees, and deductions allowed under this chapter, as winnings to players or participants or shall distribute the receipts for educational, civic, public, charitable, patriotic, or religious uses as defined in section 99B.7, subsection 3, paragraph "b". However, if a licensee who is also licensed to conduct pari-mutuel wagering at a horse racetrack has unpaid debt from the pari-mutuel racetrack operations, the first receipts of the gambling games operated within the racetrack enclosure less reasonable operating expenses, taxes, and fees allowed under this chapter shall be first used to pay the annual indebtedness. The commission shall authorize, subject to the debt payments for horse racetracks and the provisions of paragraph "b" for dog racetracks, a licensee who is also licensed to conduct pari-mutuel dog or horse racing to use receipts from gambling games within the racetrack enclosure to supplement purses for races particularly for Iowa-bred horses pursuant to an agreement which shall be negotiated between the licensee and representatives of the dog or horse owners. A qualified sponsoring organization shall not make a contribution to a candidate, political committee, candidate's committee, state statutory political committee, county statutory political committee, national political party, or fundraising event as these terms are defined in section 56.2. The membership of the board of directors of a qualified sponsoring organization shall represent a broad interest of the communities.

b. The commission shall authorize the licensees of pari-mutuel dog racetracks located in Dubuque county and Black Hawk county to conduct gambling games as provided in section 99F.4A if the licensees schedule at least one hundred thirty performances of twelve live races each day during a season of twenty-five weeks. For the pari-mutuel dog racetrack located in Pottawattamie county, the commission shall authorize the licensee to conduct gambling games as provided in section 99F.4A if the licensee schedules at least two hundred ninety performances of twelve live races each day during a season of fifty weeks. The commission shall approve an annual contract to be

negotiated between the annual recipient of the dog racing promotion fund and each dog racetrack licensee to specify the percentage or amount of gambling game proceeds which shall be dedicated to supplement the purses of live dog races. The parties shall agree to a negotiation timetable to insure no interruption of business activity. If the parties fail to agree, the commission shall impose a timetable. If the two parties cannot reach agreement, each party shall select a representative and the two representatives shall select a third person to assist in negotiating an agreement. The two representatives may select the commission or one of its members to serve as the third party. Alternately, each party shall submit the name of the proposed third person to the commission who shall then select one of the two persons to serve as the third party. All parties to the negotiations, including the commission, shall consider that the dog racetracks were built to facilitate the development and promotion of Iowa greyhound racing dogs in this state and shall negotiate and decide accordingly.

5. Before a license is granted, an operator of an excursion gambling boat shall work with the department of economic development to promote tourism throughout Iowa. Tourism information from local civic and private persons may be submitted for dissemination.

6. A person who knowingly makes a false statement on the application is guilty of an aggravated misdemeanor.

7. For the purposes of this section, applicant includes each member of the board of directors of a qualified sponsoring organization.

8. *a.* The licensee or a holder of an occupational license shall consent to the search, without a warrant, by agents of the division of criminal investigation of the department of public safety or commission employees designated by the secretary of the commission, of the licensee's or holder's person, personal property, and effects, and premises which are located on the excursion gambling boat or adjacent facilities under control of the licensee, in order to inspect or investigate for violations of this chapter or rules adopted by the commission pursuant to this chapter. The department or commission may also obtain administrative search warrants under section 808.14.

b. However, this subsection shall not be construed to permit a warrantless inspection of living quarters or sleeping rooms on the riverboat if all of the following are true:

(1) The licensee has specifically identified those areas which are to be used as living quarters or sleeping rooms in writing to the commission.

(2) Gaming is not permitted in the living quarters or sleeping rooms, and devices, records, or other items relating to the licensee's gaming operations are not stored, kept, or maintained in the living quarters or sleeping rooms.

(3) Alcoholic beverages are not stored, kept, or maintained in the living quarters or sleeping rooms except those legally possessed by the individual occupying the quarters or room.

c. The commission shall adopt rules to enforce this subsection.

95 Acts, ch 176, §3
1995 amendments to subsection 4, paragraph a, apply retroactively to January 1, 1995; 95 Acts, ch 176, §6
Subsection 4, paragraph a amended

99F.7 Licenses — terms and conditions — revocation.

1. If the commission is satisfied that this chapter and its rules adopted under this chapter applicable to licensees have been or will be complied with, the commission shall issue a license for a period of not more than three years to an applicant to own a gambling game operation and to an applicant to operate an excursion gambling boat. The commission shall decide which of the gambling games authorized under this chapter it will permit. The commission shall decide the number, location, and type of excursion gambling boats licensed under this chapter for operation on the rivers, lakes, and reservoirs of this state. The license shall set forth the name of the licensee, the type of license granted, the place where the excursion gambling boats will operate and dock, and the time and number of days during the excursion season and the off season when gambling may be conducted by the licensee. The commission shall not allow a licensee to conduct gambling games on an excursion gambling boat while docked during the off season if the licensee does not operate gambling excursions for a minimum number of days during the excursion season. The commission may delay the commencement of the excursion season at the request of a licensee.

2. A license shall only be granted to an applicant upon the express conditions that:

a. The applicant shall not, by a lease, contract, understanding, or arrangement of any kind, grant, assign, or turn over to a person the operation of an excursion gambling boat licensed under this section or of the system of wagering described in section 99F.9. This section does not prohibit a management contract approved by the commission.

b. The applicant shall not in any manner permit a person other than the licensee to have a share, percentage, or proportion of the money received for admissions to the excursion gambling boat.

3. The commission shall require, as a condition of granting a license, that an applicant to operate an excursion gambling boat develop, and as nearly as practicable, recreate boats that resemble Iowa's riverboat history.

4. The commission shall require that an applicant utilize Iowa resources, goods and services in the operation of an excursion gambling boat. The commission shall develop standards to assure that a substantial amount of all resources and goods used in the operation of an excursion gambling boat come from Iowa and that a substantial amount of all services and entertainment be provided by Iowans.

5. The commission shall, as a condition of granting a license, require an applicant to provide written documentation that, on each excursion gambling boat:

a. An applicant shall make every effort to ensure that a substantial number of the staff and entertainers employed are residents of Iowa.

b. A section is reserved solely for activities and interests of persons under the age of twenty-one and is staffed to provide adequate supervision.

c. A section is reserved for promotion and sale of arts, crafts, and gifts native to and made in Iowa.

6. It is the intent of the general assembly that employees be paid at least twenty-five percent above the federal minimum wage level.

7. A license shall not be granted if there is substantial evidence that any of the following apply:

a. The applicant has been suspended from operating a game of chance or gambling operation in another jurisdiction by a board or commission of that jurisdiction.

b. The applicant has not demonstrated financial responsibility sufficient to meet adequately the requirements of the enterprise proposed.

c. The applicant is not the true owner of the enterprise proposed.

d. The applicant is not the sole owner, and other persons have ownership in the enterprise, which fact has not been disclosed.

e. The applicant is a corporation and ten percent of the stock of the corporation is subject to a contract or option to purchase at any time during the period for which the license is to be issued unless the contract or option was disclosed to the commission and the commission approved the sale or transfer during the period of the license.

f. The applicant has knowingly made a false statement of a material fact to the commission.

g. The applicant has failed to meet a monetary obligation in connection with an excursion gambling boat.

8. A license shall not be granted if there is substantial evidence that the applicant is not of good repute and moral character or if the applicant has pled guilty to, or has been convicted of, a felony.

9. A licensee shall not loan to any person money or any other thing of value for the purpose of permitting that person to wager on any game of chance.

10. a. A license to conduct gambling games on an excursion gambling boat in a county shall be issued only if the county electorate approves the conduct of the gambling games as provided in this subsection. The board of supervisors, upon receipt of a valid petition meeting the requirements of section 331.306, shall direct the commissioner of elections to submit to the registered voters of the county a proposition to approve or disapprove the conduct of gambling games on an excursion gambling boat in the county. The proposition shall be submitted at a general election or at a special election called for that purpose. To be submitted at a general election, the petition must be received by the board of supervisors at least five working days before the last day for candidates for county offices to file nomination papers for the general election pursuant to section 44.4. If a majority of the county voters voting on the proposition favor the

conduct of gambling games, the commission may issue one or more licenses as provided in this chapter. If a majority of the county voters voting on the proposition do not favor the conduct of gambling games, a license to conduct gambling games in the county shall not be issued.

b. If licenses to conduct gambling games and to operate an excursion gambling boat are in effect pursuant to a referendum as set forth in this section and are subsequently disapproved by a referendum of the county electorate, the licenses issued by the commission after a referendum approving gambling games on excursion gambling boats shall remain valid and are subject to renewal for a total of nine years from the date of original issue unless the commission revokes a license at an earlier date as provided in this chapter.

c. If a licensee of a pari-mutuel racetrack who held a valid license issued under chapter 99D as of January 1, 1994, requests a license to operate gambling games as provided in this chapter, the board of supervisors of a county in which the licensee of a pari-mutuel racetrack requests a license to operate gambling games shall submit to the county electorate a proposition to approve or disapprove the operation of gambling games at pari-mutuel racetracks at a special election at the earliest practicable time. If the operation of gambling games at the pari-mutuel racetrack is not approved by a majority of the county electorate voting on the proposition at the election, the commission shall not issue a license to operate gambling games at the racetrack.

d. If the proposition to operate gambling games on an excursion gambling boat or at a racetrack enclosure is approved by a majority of the county electorate voting on the proposition, the board of supervisors shall submit the same proposition to the county electorate at the general election held in 2002 and, unless the operation of gambling games is terminated earlier as provided in this chapter or chapter 99D, at the general election held at each subsequent eight-year interval.

e. After a referendum has been held which defeated a proposal to conduct gambling games on excursion gambling boats or which defeated a proposal to conduct gambling games at a licensed pari-mutuel racetrack enclosure as provided in this section, another referendum on a proposal to conduct gambling games on an excursion gambling boat or at a licensed pari-mutuel racetrack shall not be held for at least two years.

11. If a docking fee is charged by a city or a county, a licensee operating an excursion gambling boat shall pay the docking fee one year in advance.

12. A licensee shall not be delinquent in the payment of property taxes or other taxes or fees or in the payment of any other contractual obligation or debt due or owed to a city or county.

13. An excursion gambling boat operated on inland waters of this state shall meet all of the requirements of chapter 462A and is subject to an inspection of its sanitary facilities to protect the environment

and water quality before a certificate of registration is issued by the department of natural resources or a license is issued under this chapter.

14. If a licensed excursion boat stops at more than one harbor and travels past a county without stopping at any port in that county, the commission shall require the excursion boat operator to develop a schedule for ports of call in which a county referendum has been approved, and the port of call has the necessary facilities to handle the boat. The commission may limit the schedule to only one port of call per county.

15. Upon a violation of any of the conditions listed in this section, the commission shall immediately revoke the license.

16. The commission shall require each licensee operating gambling games to post in conspicuous locations specified by the commission the average percentage payout from the gambling machines.

95 Acts, ch 49, §2; 95 Acts, ch 176, §4, 5

Subsection 10, paragraph e, and the 1995 amendment to subsection 10, paragraph a, by 95 Acts, ch 176, §4 apply retroactively to September 1, 1994; 95 Acts, ch 176, §6

See Code editor's note to §13B.8

Subsection 10 amended

Subsection 10, NEW paragraph e

99F.10 Admission fee — tax — local fees.

1. A qualified sponsoring organization conducting gambling games on an excursion gambling boat licensed under section 99F.7 shall pay the tax imposed by section 99F.11.

2. An excursion boat licensee shall pay to the commission an admission fee for each person embarking on an excursion gambling boat with a ticket of admission. The admission fee shall be set by the commission.

a. If tickets are issued which are good for more than one excursion, the admission fee shall be paid for each person using the ticket on each excursion that the ticket is used.

b. If free passes or complimentary admission tickets are issued, the licensee shall pay the same fee upon these passes or complimentary tickets as if they were sold at the regular and usual admission rate.

c. However, the excursion boat licensee may issue fee-free passes to actual and necessary officials and employees of the licensee or other persons actually working on the excursion gambling boat.

d. The issuance of fee-free passes is subject to the rules of the commission, and a list of all persons to whom the fee-free passes are issued shall be filed with the commission.

3. In addition to the admission fee charged under subsection 2 and subject to approval of excursion gambling boat docking by the voters, a city may adopt, by ordinance, an admission fee not exceeding fifty cents for each person embarking on an excursion gambling boat docked within the city or a county may adopt, by ordinance, an admission fee not exceeding fifty cents for each person embarking on an excursion gambling boat docked outside the boundaries of a city. The admission revenue received by a city or a county shall be credited to the city general fund or county general fund as applicable.

4. In determining the license fees and state admission fees to be charged as provided under section 99F.4 and this section, the commission shall use the amount appropriated to the commission plus the cost of salaries for no more than two special agents and no more than four gaming enforcement officers for each excursion gambling boat for the division of criminal investigation's excursion gambling boat activities as the basis for determining the amount of revenue to be raised from the license fees and admission fees. The division's salary costs shall be limited to sixty-five percent of the salary costs for special agents and sixty-five percent of the salary costs for gaming en-

forcement for personnel assigned to excursion gambling boats who enforce laws and rules adopted by the commission.

5. No other license tax, permit tax, occupation tax, excursion fee, or taxes on fees shall be levied, assessed, or collected from a licensee by the state or by a political subdivision, except as provided in this chapter.

6. No other excise tax shall be levied, assessed, or collected from the licensee relating to gambling excursions or admission charges by the state or by a political subdivision, except as provided in this chapter.

95 Acts, ch 207, §22
Subsection 4 amended

CHAPTER 123

ALCOHOLIC BEVERAGE CONTROL

123.28 Restrictions on transportation.

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

95 Acts, ch 48, §1
See also §321.284
Unnumbered paragraph 2 stricken

123.38 Nature of permit or license — surrender — transfer.

A special liquor permit, liquor control license, wine permit, or beer permit is a personal privilege and is revocable for cause. It is not property nor is it subject to attachment and execution nor alienable nor as-

signable, and it shall cease upon the death of the permittee or licensee. However, the administrator of the division may in the administrator's discretion allow the executor or administrator of a permittee or licensee to operate the business of the decedent for a reasonable time not to exceed the expiration date of the permit or license. Every permit or license shall be issued in the name of the applicant and no person holding a permit or license shall allow any other person to use it.

Any licensee or permittee, or the licensee's or permittee's executor or administrator, or any person duly appointed by the court to take charge of and administer the property or assets of the licensee or permittee for the benefit of the licensee's or permittee's creditors, may voluntarily surrender a license or permit to the division. When a license or permit is surrendered the division shall notify the local authority, and the division or the local authority shall refund to the person surrendering the license or permit, a proportionate amount of the fee received by the division or the local authority for the license or permit as follows: if a license or permit is surrendered during the first three months of the period for which it was issued, the refund shall be three-fourths of the amount of the fee; if surrendered more than three months but not more than six months after issuance, the refund shall be one-half of the amount of the fee; if surrendered more than six months but not more than nine months after issuance, the refund shall be one-fourth of the amount of the fee. No refund shall be made, however, for any special liquor permit, nor for a liquor control license, wine permit, or beer permit surrendered more than nine months after issuance. For purposes of this paragraph, any portion of license or permit fees used for the purposes authorized in section 331.424, subsection 1, paragraphs "a" and "b", and in section 331.424A, shall not be deemed received either by the division or by a local authority. No refund shall be made to any licensee or permittee, upon the surrender of the license or per-

mit, if there is at the time of surrender, a complaint filed with the division or local authority, charging the licensee or permittee with a violation of this chapter. If upon a hearing on a complaint the license or permit is not revoked or suspended, then the licensee or permittee is eligible, upon surrender of the license or permit, to receive a refund as provided in this section; but if the license or permit is revoked or suspended upon hearing the licensee or permittee is not eligible for the refund of any portion of the license or permit fee.

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

95 Acts, ch 206, §5

1995 amendment to unnumbered paragraph 2 is effective January 1, 1996, and applies to taxes payable in the fiscal year beginning July 1, 1996, and subsequent fiscal years; 95 Acts, ch 206, §12

Unnumbered paragraph 2 amended

123.47 Persons under the age of eighteen — penalty.

A person shall not sell, give, or otherwise supply alcoholic liquor, wine, or beer to any person knowing or having reasonable cause to believe that person to be under the age of eighteen, and a person or persons under the age of eighteen shall not purchase or attempt to purchase, or individually or jointly have alcoholic liquor, wine, or beer in their possession or control; except in the case of liquor, wine, or beer given or dispensed to a person under the age of

eighteen within a private home and with the knowledge, presence, and consent of the parent or guardian, for beverage or medicinal purposes or as administered to the person by either a physician or dentist for medicinal purposes and except to the extent that a person under the age of eighteen may handle alcoholic beverages, wine, and beer during the regular course of the person's employment by a liquor control licensee, or wine or beer permittee under this chapter. A person, other than a licensee or permittee, who violates this section regarding the purchase of or attempt to purchase alcoholic liquor, wine, or beer shall pay a twenty-five dollar penalty.

95 Acts, ch 191, §3

Section amended

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

A peace officer shall make a reasonable effort to identify a person under the age of eighteen discovered to be in possession of alcoholic liquor, wine, or beer in violation of section 123.47 and if the person is not referred to juvenile court, the law enforcement agency of which the peace officer is an employee shall make a reasonable attempt to notify the person's custodial parent or legal guardian of such possession, whether or not the person is arrested or a citation is issued pursuant to section 805.16, unless the officer has reasonable grounds to believe that such notification is not in the best interests of the person or will endanger that person. If the person is taken into custody, the peace officer shall notify a juvenile court officer who shall make a reasonable effort to identify the elementary or secondary school the person attends, if any, and to notify the superintendent of the school district or the superintendent's designee, or the authorities in charge of the nonpublic school of the taking into custody. A reasonable attempt to notify the person includes but is not limited to a telephone call or notice by first-class mail.

95 Acts, ch 191, §4

Section amended

CHAPTER 123A

BEER BREWERS AND WHOLESALERS

123A.1 Purposes and scope.

This chapter is enacted pursuant to the authority of the state under the provisions of the twenty-first amendment to the Constitution of the United States to promote the public's interest in fair, efficient, and competitive distribution of beer products through regulation and encouragement of brewer and wholesaler vendors to conduct their business relations toward these ends by:

1. Assuring that the beer wholesaler is free to manage its business enterprise.

2. Assuring the brewer and the public of service from wholesalers who will devote reasonable efforts and resources to distribution and sales of all of the brewer's products which the wholesaler has been granted the right to sell and distribute and maintain satisfactory sales levels.

3. Promoting and maintaining a sound, stable, and viable three-tier system of distribution of beer to the public.

95 Acts, ch 101, §1

NEW section

123A.2 Definitions.

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

1. "*Affected party*" means a wholesaler, brewer, master distributor, successor brewer, or any person that is a party to an agreement.

2. "*Agreement*" means a contract or arrangement whether expressed or implied, oral or written, for a definite or indefinite period between a brewer and a wholesaler pursuant to which a wholesaler has been granted the right to purchase, resell, and distribute one or more brands of beer offered by a brewer, or a contract or arrangement in which a brewer grants to a wholesaler a license to use a trade name, trademark, service mark, or related characteristic and in which there is a community of interest in the marketing of the products of the brewer. An agreement exists when one or more of the following occur:

a. A brewer has shipped beer to a wholesaler or accepted an order for beer from a wholesaler.

b. A brewer purchases the right to manufacture a beer product, the right to use the trade name for the product, or the right to distribute a product from another brewer with whom the wholesaler has an agreement.

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

4. "*Brand*" means a word, name, group of letters, symbol, or a combination of words, names, letters, or symbols adopted and used by a brewer to identify a specific beer product, and to distinguish that beer product from other beer products brewed or marketed by that brewery or other breweries.

5. "*Brand extension*" means a brand which incorporates all or a substantial part of the unique features of a preexisting brand of the same brewery and which relies to a significant extent on the goodwill associated with the preexisting brand. However, a general corporate logo or symbol or an advertising message, whether appearing on the product packaging or elsewhere, is not a brand, brand extension, or part of a brand or brand extension.

6. "*Brewer*" means a person who is engaged in the manufacture of beer for the purpose of sale, barter, exchange, or transportation, a master distributor, or a fermenter, processor, bottler, packager, or importer of beer, or a successor brewer.

7. "*Designated member*" means a deceased wholesaler's spouse, child, grandchild, parent, brother, or sister, who is entitled to inherit the deceased wholesaler's ownership interest under the terms of the deceased wholesaler's will, other testamentary de-

vice, or the laws of intestate succession. With respect to an incapacitated individual having an ownership interest in a wholesaler, "*designated member*" also means a person appointed by the court as the conservator of the individual's property. "*Designated member*" also includes the appointed and qualified personal representative and the testamentary trustee of a deceased wholesaler.

8. "*Good cause*" exists if the wholesaler or affected party has failed to comply with reasonable requirements which are imposed upon the wholesaler or affected party through an agreement, which do not discriminate either by their terms or in the methods of their enforcement as compared with requirements imposed on other similarly situated wholesalers by the brewer, and which are not in violation of any law or administrative rule.

9. "*Good faith*" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade and defined and interpreted under section 554.2103.

10. "*Manager*" means an individual named or designated by agreement between the brewer and wholesaler, who is principally responsible for the daily management of the wholesaler.

11. "*Master distributor*" means a wholesaler who acts in the role of or in a similar capacity as a brewer or outside seller of one or more brands of beer to other wholesalers on a regular basis in the normal course of business.

12. "*Reasonable standards and qualifications*" means those criteria applied by the brewer to similarly situated wholesalers during a period of twenty-four months before a proposed change in a successor manager of the wholesaler's business.

13. "*Similarly situated wholesalers*" means wholesalers of a brewer that are of a generally comparable size, and operate in markets with similar demographic characteristics, including population size, density, distribution, and vital statistics, and reasonably similar economic and geographic conditions.

14. "*Successor brewer*" means a person who succeeds to the role of a brewer or master distributor to manufacture or distribute one or more brands of beer whether by merger, purchase of corporate shares, purchase of assets, or any other arrangement.

15. "*Successor manager*" means an individual named or designated by agreement between a brewer and wholesaler who succeeds to the role of manager who will be principally responsible for the daily management of the wholesaler.

16. "*Territory*" means the geographic area of primary sales responsibility designated by an agreement between a wholesaler and brewer for one or more brands of beer of the brewer.

17. "*Wholesaler*" means a person, other than a vintner, brewer, or bottler of beer, who sells, barter, exchanges, offers for sale, possesses with intent to sell, deals, or traffics in beer.

123A.3 Termination and notice of cancellation.

1. Except as provided in subsection 5, a brewer or wholesaler shall not amend, modify, cancel, fail to renew, or otherwise terminate an agreement unless the brewer or wholesaler furnishes prior notification to the other party in accordance with subsection 2.

2. The notification required under subsection 1 shall be in writing and sent to the affected party by certified mail not less than ninety days before the date on which the agreement will be amended, modified, canceled, not renewed, or otherwise terminated. The notification shall contain all of the following:

a. A statement of intention to amend, modify, cancel, fail to renew, or otherwise terminate the agreement.

b. A statement enumerating the facts and reasons for the action, including documentation necessary to fully inform the wholesaler of the reasons for the action.

c. The date on which the action will take effect.

3. For each cancellation, nonrenewal, or termination, the brewer shall have the burden of showing that it has acted in good faith, that the notice requirements under this section have been complied with, and that there was good cause for the cancellation, nonrenewal, or termination.

4. Notwithstanding the terms or conditions of any agreement, good cause exists for the purpose of a cancellation, nonrenewal, or termination if all of the following occur:

a. The wholesaler fails to comply with a provision of the agreement which is both reasonable and of material significance to the business relationship between the wholesaler and the brewer.

b. The brewer first acquired knowledge of the failure described in paragraph "a" not more than twenty-four months before the date notification was given pursuant to subsection 2.

c. The wholesaler was given notice by the brewer of failure to comply with the agreement.

d. The wholesaler has been given thirty days in which to submit a plan of corrective action to comply with the agreement and an additional ninety days to cure the noncompliance in accordance with the plan, and has failed to correct the failure to comply with the provisions of the agreement.

5. A brewer may cancel, fail to renew, or otherwise terminate an agreement without furnishing any prior notification and without good cause as required in subsection 4 for any of the following reasons:

a. The wholesaler's failure to pay any account when due and upon written demand by the brewer for the payment, in accordance with agreed upon payment terms.

b. The wholesaler's assignment for the benefit of creditors, or similar disposition, of substantially all of the assets of the party's business.

c. The insolvency of the wholesaler, or the institution of proceedings in bankruptcy by or against the wholesaler.

d. The dissolution or liquidation of the wholesaler.

e. The wholesaler's conviction of, or plea of guilty or no contest to, a charge of violating a law or rule in this state which materially and adversely affects the ability of either party to continue to sell beer in this state, or the revocation or suspension of a license or permit to sell beer in this state for a period greater than thirty-one days.

f. Any attempted transfer of business assets of the wholesaler, ten percent or more of the voting stock of the wholesaler or the voting stock of any parent corporation of the wholesaler, or any change in the beneficial ownership or control of any wholesaler without obtaining the prior consent or approval as provided for under section 123A.6.

g. The wholesaler's fraudulent conduct relating to a material matter on the part of the wholesaler in dealings with the brewer or its product. However, the brewer shall have the burden of proving fraudulent conduct relating to a material matter on the part of the wholesaler in any legal action challenging the termination.

h. The wholesaler distributes, sells, or delivers beer to a retailer whose premises are situated outside the geographic territory agreed upon by the wholesaler and the brewer as the area in which the wholesaler will sell beer purchased from the brewer, without the consent of the brewer and the distributor who has been assigned the territory by the brewer.

95 Acts, ch 101, §3
NEW section

123A.4 Cancellation.

A brewer or a wholesaler shall not cancel, fail to renew, or otherwise terminate an agreement unless the party intending that action has good cause for the cancellation, failure to renew, or termination, has made good faith efforts to resolve disagreements, and, in any case in which prior notification is required under section 123A.3, the party intending to act has furnished the prior notification and the other party has not eliminated the reasons specified in the notification for cancellation, failure to renew, or termination, within the periods provided in section 123A.3, subsection 4, paragraph "d".

95 Acts, ch 101, §4
NEW section

123A.5 Prohibited conduct.

1. A brewer shall not commit any of the following actions:

a. Induce or coerce, or attempt to induce or coerce, any wholesaler to engage in any illegal act or course of conduct.

b. Require a wholesaler to assent to any unreasonable requirement, condition, understanding, or term of an agreement prohibiting a wholesaler from selling the product of another brewer.

c. Fix, maintain, or establish the price at which a wholesaler may resell beer, or to change, by any means, the price charged to the wholesaler after beer has been ordered by the wholesaler from the brewer.

d. Require any wholesaler to accept delivery of any beer or any other item or commodity which shall not have been ordered by the wholesaler.

e. Require a wholesaler without the wholesaler's approval to participate in an arrangement for the payment or crediting by an electronic fund transfer transaction for any item or commodity other than beer, or to access a wholesaler's account for any item or commodity other than beer.

f. Require or prohibit any change in the manager or successor manager of any wholesaler who has been approved by the brewer as of or subsequent to July 1, 1995, unless the brewer acts in good faith. If a wholesaler changes an approved manager or successor manager, a brewer shall not require or prohibit the change unless the person selected by the wholesaler fails to meet the nondiscriminatory, material, and reasonable standards and qualifications for managers or successor managers consistently applied to similarly situated wholesalers by the brewer. However, the brewer shall have the burden of proving that the person fails to meet the reasonable standards and qualifications.

g. Discriminate among the brewer's wholesalers in any business dealings including, but not limited to, the price of beer sold to the wholesaler or terms of sale offered to wholesalers, unless the difference among its wholesalers is based on reasonable grounds.

h. Fail to provide each wholesaler of the brewer's brand with a written agreement which contains in total the brewer's agreement with each wholesaler, and designates a specific exclusive sales territory. The terms of written agreements executed, amended, or renewed after July 1, 1995, shall be consistent with this chapter, and this chapter may be incorporated by reference in the agreement.

i. Enter into an additional agreement with any other wholesaler for, or to sell to any other wholesaler, the same brand of beer or brand extension in the same territory or any portion of the territory, or to sell directly to any retailer in this state.

j. Require a wholesaler to purchase one or more brands of beer in order for the wholesaler to purchase another brand of beer for any reason.

k. Require a wholesaler, by any means, directly to participate in or contribute to any local or national advertising fund controlled directly or indirectly by a brewer.

l. Require by a provision of an agreement or other instrument in connection with the agreement that any dispute arising out of or in connection with the agreement be determined through the application of any other state's laws, be determined in federal court sitting in a state other than Iowa, or be determined in a state court of a state other than this state. A provision contained in any agreement or other instrument in connection with the agreement which contravenes this section shall be null and void.

2. A wholesaler who, pursuant to an agreement, is granted a sales territory for which the wholesaler is primarily responsible or in which the wholesaler is required to concentrate the wholesaler's efforts, shall

not make any sale or delivery of beer to any retail licensee whose place of business is not within the territory granted to the wholesaler unless agreed upon by all affected parties.

95 Acts, ch 101, §5
NEW section

123A.6 Transfer of business assets or stock.

1. A brewer shall not unreasonably withhold or delay its approval of any assignment, sale, or transfer of the stock or other indicia of ownership of a wholesaler or all or any portion of a wholesaler's assets, wholesaler's voting stock, the voting stock of any parent corporation, or the beneficial ownership or control of any other entity owning or controlling the wholesaler, including the wholesaler's rights and obligations under the terms of an agreement when the person to be substituted meets reasonable standards. Upon the death of one of the partners of a partnership operating the business of a wholesaler, a brewer shall not deny the surviving partner of the partnership the right to become a successor-in-interest to the agreement between the brewer and the partnership, if the survivor has been active in the management of the partnership and is otherwise capable of carrying on the business of the partnership.

2. Notwithstanding subsection 1, upon the death of a wholesaler, a brewer shall not deny approval for any transfer of ownership or management to a designated member, including the rights under the agreement with the brewer. The transfer or assignment shall not be effective until written notice is given to the brewer, but the brewer's consent to the transfer or assignment shall not be required.

95 Acts, ch 101, §6
NEW section

123A.7 Reasonable compensation.

1. A brewer who cancels, fails to renew, or terminates any agreement, or unlawfully denies approval of, or unreasonably withholds consent to any assignment, transfer, or sale of a wholesaler's business assets or voting stock or other equity securities, except as provided in this chapter, shall pay the wholesaler with which the brewer has an agreement pursuant to this chapter, reasonable compensation for the fair market value of the wholesaler's business with relation to the affected brand of beer. The fair market value of the wholesaler's business shall include, but not be limited to, its goodwill, if any.

2. If a brewer and a wholesaler are unable to mutually agree on the reasonable compensation to be paid for the value of the wholesaler's business, either party may maintain a civil action as provided in section 123A.9, or the matter may, by mutual agreement of the parties, be submitted to a three-member arbitration panel consisting of one representative selected by the brewer but unassociated with the brewer; one representative selected by the wholesaler but unassociated with the wholesaler; and an impartial arbitrator selected by the other two members from a list provided by the American arbitration

association, and the claim settled in accordance with the rules provided by the American arbitration association. Arbitration costs shall be paid one-half by the wholesaler and one-half by the brewer. Arbitration shall be conducted in accordance with the commercial arbitration rules of the American arbitration association and the laws of this state, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The award of the arbitrator shall be final and binding on the parties.

95 Acts, ch 101, §7
NEW section

123A.8 Right of free association.

A brewer or wholesaler shall not restrict or inhibit, directly or indirectly, the right of free association among brewers or wholesalers for any lawful purpose.

95 Acts, ch 101, §8
NEW section

123A.9 Judicial remedies.

1. If a brewer or a wholesaler who is a party to an agreement pursuant to this chapter fails to comply with this chapter or otherwise engages in conduct prohibited under this chapter, the aggrieved party may maintain a civil action in district court if the cause of action directly relates to or stems from the relationship of the individual parties under the agreement.

2. A brewer or wholesaler may bring an action for declaratory judgment for determination of any controversy arising under this chapter or out of the brewer and wholesaler agreement.

3. Upon proper petition to the district court, a brewer or wholesaler may obtain injunctive relief against a violation of this chapter.

4. In an action under subsection 1, the district court may grant the relief as the court determines is necessary or appropriate considering the purposes of this chapter. The district court may, if it finds that a brewer has acted in bad faith in invoking the amendment, modification, cancellation, nonrenewal, or termination provision of the agreement between the brewer and wholesaler, or has unreasonably withheld its consent to any assignment, transfer, or sale of the wholesaler's business, award equitable relief, actual damages, court costs, and attorney's fees.

5. The prevailing party in an action under subsection 1 shall be entitled to actual damages, court costs, and attorney's fees at the court's discretion.

6. With respect to a dispute arising under this chapter or out of the agreement between a brewer and wholesaler, the wholesaler and brewer each has the absolute right, before the wholesaler or brewer has agreed to arbitrate a particular dispute, to refuse

to arbitrate that particular dispute. A brewer shall not, as a condition of entering into or renewing an agreement, require the wholesaler to agree to arbitration in lieu of judicial remedies.

7. A brewer shall not take retaliatory action against a wholesaler who files or manifests an intention to file a complaint of alleged violation of state or federal law or regulation by the brewer with the appropriate state or federal regulatory authority. Retaliatory action shall include, but shall not be limited to, refusal without good cause to continue the agreement, or a material reduction in the quality of service or quantity of products available to the wholesaler under the agreement, or impede the normal business operations of the wholesaler.

95 Acts, ch 101, §9
NEW section

123A.10 Waiver — prohibited.

A brewer shall not require a wholesaler to waive compliance with any provision of this chapter. This chapter shall not be construed to limit or prohibit a good faith settlement of a dispute voluntarily entered into between the parties.

95 Acts, ch 101, §10
NEW section

123A.11 Indemnification.

A brewer shall fully indemnify and hold harmless the brewer's wholesaler against any losses, including, but not limited to, court costs and reasonable attorney's fees or damages arising out of complaints, claims, or lawsuits, including, but not limited to, strict liability, negligence, misrepresentation, or express or implied warranty where the complaint, claim, or lawsuit relates to the manufacture or packaging of beer or other functions by the brewer which are beyond the control of the wholesaler.

95 Acts, ch 101, §11
NEW section

123A.12 Application to existing agreements.

1. The provisions of this chapter apply to a valid agreement in effect immediately before July 1, 1995, when the first of the following dates occurs:

a. On the effective date of the next amendment, modification, or renewal of the existing valid agreement.

b. On the next anniversary date of the execution of the original agreement between the wholesaler and the brewer.

2. If no written agreement exists, the provisions of the chapter apply to the implied or oral unwritten agreement of a brewer and a wholesaler of that brewery on July 1, 1995.

95 Acts, ch 101, §12
NEW section

CHAPTER 124

CONTROLLED SUBSTANCES

124.101 Definitions.

As used in this chapter:

1. *“Administer”* means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

a. A practitioner, or in the practitioner’s presence, by the practitioner’s authorized agent; or

b. The patient or research subject at the direction and in the presence of the practitioner.

Nothing contained in this chapter shall be construed to prevent a physician, dentist, podiatric physician, or veterinarian from delegating the administration of controlled substances under this chapter to a nurse, intern, or other qualified individual or, as to veterinarians, to an orderly or assistant, under the veterinarian’s direction and supervision; all pursuant to rules adopted by the board.

2. *“Agent”* means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouse, or employee of the carrier or warehouse.

3. *“Board”* means the state board of pharmacy examiners.

4. *“Bureau”* means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

5. *“Controlled substance”* means a drug, substance, or immediate precursor in schedules I through V of division II of this chapter.

6. *“Counterfeit substance”* means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

7. *“Deliver”* or *“delivery”* means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

8. *“Department”* means the department of public safety of the state of Iowa.

9. *“Dispense”* means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

10. *“Dispenser”* means a practitioner who dispenses.

11. *“Distribute”* means to deliver other than by administering or dispensing a controlled substance.

12. *“Distributor”* means a person who distributes.

13. *“Drug”* means:

a. Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

c. Substances, other than food, intended to affect the structure or any function of the human body or animals; and

d. Substances intended for use as a component of any article specified in paragraph “a”, “b”, or “c” of this subsection. It does not include devices or their components, parts, or accessories.

14. *“Immediate precursor”* means a substance which the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

15. *“Isomer”* means the optical isomer, except as used in section 124.204, subsection 4, section 124.204, subsection 9, paragraph “b”, and section 124.206, subsection 2, paragraph “d”. As used in section 124.204, subsection 4, and section 124.204, subsection 9, paragraph “b”, *“isomer”* means the optical, positional, or geometric isomer. As used in section 124.206, subsection 2, paragraph “d”, *“isomer”* means the optical or geometric isomer.

16. *“Manufacture”* means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for the individual’s own use, or the preparation, compounding, packaging, or labeling of a controlled substance:

a. By a practitioner as an incident to administering or dispensing of a controlled substance in the course of the practitioner’s professional practice, or

b. By a practitioner, or by an authorized agent under the practitioner’s supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

17. *“Marijuana”* means all parts of the plants of the genus *cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, including tetrahydrocannabinols. It does not include the mature stalks of the plant, fiber produced

from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

18. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium, opiates, derivatives of opium and opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation. Such term does not include the isoquinoline alkaloids of opium.

b. Poppy straw and concentrate of poppy straw.

c. Opium poppy.

d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs "a" through "c".

19. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 124.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextro-methorphan). It does include its racemic and levorotatory forms.

20. "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

21. "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

22. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

23. "Practitioner" means either:

a. A physician, dentist, podiatric physician, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

b. A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

24. "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

25. "Simulated controlled substance" means a substance which is not a controlled substance but which is expressly represented to be a controlled substance, or a substance which is not a controlled substance but which is impliedly represented to be a controlled substance and which because of its nature, packaging, or appearance would lead a reasonable person to believe it to be a controlled substance.

26. "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession, and any area subject to the legal authority of the United States of America.

27. "Ultimate user" means a person who lawfully possesses a controlled substance for the person's own use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household.

95 Acts, ch 108, §1
Subsections 1 and 23 amended

124.208 Schedule III—substances included.

1. Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a. Benzphetamine.
- b. Chlorphentermine.
- c. Clortermine.
- d. Phendimetrazine.

3. *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

a. Any compound, mixture or preparation containing amobarbital, secobarbital, pentobarbital or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedules.

b. Any suppository dosage form containing amobarbital, secobarbital, pentobarbital or any salt of any of these drugs and approved by the federal food and drug administration for marketing only as a suppository.

c. Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof.

- d. Chlorhexadol.
- e. Lysergic acid.
- f. Lysergic acid amide.
- g. Methyprylon.
- h. Sulfondiethylmethane.
- i. Sulfonethylmethane.
- j. Sulfonmethane.
- k. Tiletamine and zolazepam or any salt thereof,

including the following:

(1) Some trade or other names for a tiletamine-zolazepam combination product: Telazol.

(2) Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone.

(3) Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyraxolo-[3,4-e][1,4]-diazepin-7(1H)-one flupyrzapon.

4. *Nalorphine.*

5. *Narcotic drugs.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

a. Not more than one point eight grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

b. Not more than one point eight grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

c. Not more than three hundred milligrams of dihydrocodeinone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

d. Not more than three hundred milligrams of dihydrocodeinone (another name: hydrocodone) per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

e. Not more than one point eight grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

f. Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

g. Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

h. Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

6. *Anabolic steroids.* Anabolic steroids, except any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species unless such steroid is prescribed, dispensed, or distributed for human use. Anabolic steroids include any salt, ester, or isomer of the following drugs or substances if that salt, ester, or isomer promotes muscle growth:

- a. Boldenone.
- b. Chlorotestosterone.
- c. Clostebol.
- d. Dehydrochlormethyltestosterone.
- e. Dihydrotestosterone.
- f. Drostanolone.
- g. Ethylestrenol.
- h. Fluoxymesterone.
- i. Formobulone.

- j. Mesterolone.
- k. Methandienone.
- l. Methandranone.
- m. Methandriol.
- n. Methandrostenolone.
- o. Methenolone.
- p. Methyltestosterone.
- q. Mibolerone.
- r. Nandrolone.
- s. Norethandrolone.
- t. Oxandrolone.
- u. Oxymesterone.
- v. Oxymetholone.
- w. Stanolone.
- x. Stanozolol.
- y. Testolactone.
- z. Testosterone.
- aa. Trenbolone.

7. The board by rule may except any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections 2 and 3 of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

95 Acts, ch 6, §1
Subsection 6 stricken and rewritten

124.415 Parental and school notification — persons under eighteen years of age.

A peace officer shall make a reasonable effort to identify a person under the age of eighteen discovered to be in possession of a controlled substance, counterfeit substance, or simulated controlled substance in violation of this chapter, and if the person is not referred to juvenile court, the law enforcement agency of which the peace officer is an employee shall make a reasonable attempt to notify the person's custodial parent or legal guardian of such possession, whether or not the person is arrested, unless the officer has reasonable grounds to believe that such notification is not in the best interests of the person or will endanger that person. If the person is taken into custody, the peace officer shall notify a juvenile court officer who shall make a reasonable effort to identify the elementary or secondary school the person attends, if any, and to notify the superintendent of the school district, the superintendent's designee, or the authorities in charge of the nonpublic school of the taking into custody. A reasonable attempt to notify the person includes but is not limited to a telephone call or notice by first-class mail.

95 Acts, ch 191, §5
Section amended

124.416 Exception to restrictions on bail.

Notwithstanding section 811.1, the court, after making the finding required by section 811.1, sub-

section 3, may admit a person convicted of a violation of section 124.401, subsection 2, or of a violation of section 124.406, to bail if the prosecuting attorney in

the action and the defendant's counsel jointly petition the court to admit the person to bail.

95 Acts, ch 191, §6
Section amended

CHAPTER 125

CHEMICAL SUBSTANCE ABUSE

Integrated substance abuse managed care system;
appropriation; federal waiver application;
95 Acts, ch 212, §5

CHAPTER 135

DEPARTMENT OF PUBLIC HEALTH

Home care aide program; 95 Acts, ch 212, §5
Integrated substance abuse managed care
system; appropriation; federal waiver
application; 95 Acts, ch 212, §5

135.1 Definitions.

For the purposes of chapters 152B and 155 and title IV, subtitle 2, excluding chapters 142B, 145B, and 146, unless otherwise defined:

1. *"Director"* shall mean the director of public health.

2. *"Health officer"* shall mean the physician who is the health officer of the local board of health.

3. *"Local board"* shall mean the local board of health.

4. *"Physician"* means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, osteopathy, chiropractic, or podiatry under the laws of this state; but a person licensed as a physician and surgeon shall be designated as a "physician" or "surgeon", a person licensed as an osteopathic physician and surgeon shall be designated as an "osteopathic physician" or "osteopathic surgeon", a person licensed as an osteopath shall be designated as an "osteopathic physician", a person licensed as a chiropractor shall be designated as a "chiropractor", and a person licensed as a podiatrist shall be designated as a "podiatric physician".

5. *"Rules"* shall include regulations and orders.

6. *"Sanitation officer"* shall mean the police officer who is the permanent sanitation and quarantine officer and who is subject to the direction of the local board of health in the execution of health and quarantine regulations.

7. *"State department"* or *"department"* shall mean the Iowa department of public health.

95 Acts, ch 108, §2
Subsection 4 amended

135.24 Volunteer health care provider program established — immunity from civil liability.

1. The director shall establish within the department a program to provide to eligible hospitals, clin-

ics, or other health care facilities, health care referral programs, or charitable organizations, free medical services given on a voluntary basis by health care providers. A participating health care provider shall register with the department and obtain from the department a list of eligible, participating hospitals, clinics, or other health care facilities, health care referral programs, or charitable organizations.

2. The department, in consultation with the department of human services, shall adopt rules to implement the volunteer health care provider program which shall include the following:

a. Procedures for registration of health care providers deemed qualified by the board of medical examiners, the board of physician assistant examiners, and the board of nursing.

b. Criteria for and identification of hospitals, clinics, or other health care facilities, health care referral programs, or charitable organizations, eligible to participate in the provision of free medical services through the volunteer health care provider program. A health care facility, a health care referral program, a charitable organization, or a health care provider participating in the program shall not bill or charge a patient for any health care provider service provided under the volunteer health care provider program.

3. A health care provider providing free care under this section shall be considered an employee of the state under chapter 669 and shall be afforded protection as an employee of the state under section 669.21, provided that the health care provider has done all of the following:

a. Registered with the department pursuant to subsection 1.

b. Provided medical services through a hospital, clinic, or other health care facility, health care referral program, or charitable organization listed as eli-

gible and participating by the department pursuant to subsection 1.

4. For the purposes of this section, “*charitable organization*” means a charitable organization within the meaning of section 501(c)(3) of the Internal Revenue Code which has as its primary purpose the sponsorship or support of programs designed to improve the quality, awareness, and availability of medical services to children and to serve as a funding mechanism for provision of medical services, including but not limited to immunizations, to children in this state.

5. For the purposes of this section, “*health care provider*” means a physician licensed under chapter 148, 150, or 150A, a physician assistant licensed and practicing under a supervising physician pursuant to chapter 148C, a licensed practical nurse, or a registered nurse.

95 Acts, ch 121, §1
Section amended

DIVISION IV

IOWA CHILD DEATH REVIEW TEAM

135.43 Iowa child death review team established — duties.

1. An Iowa child death review team is established as an independent agency of state government. The Iowa department of public health shall provide staffing and administrative support to the team.

2. The membership of the review team is subject to the provisions of sections 69.16 and 69.16A, relating to political affiliation and gender balance. Review team members who are not designated by another appointing authority shall be appointed by the director of public health in consultation with the director of human services. Membership terms shall be for three years. A membership vacancy shall be filled in the same manner as the original appointment. The review team shall elect a chairperson and other officers as deemed necessary by the review team. The review team shall meet upon the call of the chairperson, upon the request of a state agency, or as determined by the review team. The members of the team are eligible for reimbursement of actual and necessary expenses incurred in the performance of their official duties.

The review team shall include the following:

- a. The state medical examiner or the state medical examiner’s designee.
- b. A certified or licensed professional who is knowledgeable concerning sudden infant death syndrome.
- c. A pediatrician who is knowledgeable concerning deaths of children.
- d. A family practice physician who is knowledgeable concerning deaths of children.
- e. One mental health professional who is knowledgeable concerning deaths of children.
- f. One social worker who is knowledgeable concerning deaths of children.
- g. A certified or licensed professional who is knowledgeable concerning domestic violence.

h. A professional who is knowledgeable concerning substance abuse.

i. A local law enforcement official.

j. A county attorney.

k. An emergency room nurse who is knowledgeable concerning the deaths of children.

l. A perinatal expert.

m. A representative of the health insurance industry.

n. One other appointed at large.

3. The review team shall perform the following duties:

a. Collect, review, and analyze child death certificates and child death data, including patient records or other pertinent confidential information concerning the deaths of children age six or younger, and other information as the review team deems appropriate for use in preparing an annual report to the governor and the general assembly concerning the causes and manner of child deaths. The report shall include analysis of factual information obtained through review and recommendations regarding prevention of child deaths.

b. Recommend to the governor and the general assembly interventions to prevent deaths of children based on an analysis of the cause and manner of such deaths.

c. Recommend to the agencies represented on the review team changes which may prevent child deaths.

d. Maintain the confidentiality of any patient records or other confidential information reviewed.

e. Develop protocols for and establish a committee to review child abuse investigations which involve the death of a child.

4. The following individuals shall designate a liaison to assist the review team in fulfilling its responsibilities:

- a. The director of public health.
- b. The director of human services.
- c. The commissioner of public safety.
- d. The administrator of the division of vital records of the Iowa department of public health.
- e. The attorney general.
- f. The director of transportation.
- g. The director of the department of education.

5. The review team may establish subcommittees to which the team may delegate some or all of the team’s responsibilities under subsection 3.

6. The Iowa department of public health and the department of human services shall adopt rules providing for disclosure of information which is confidential under chapter 22 or any other provision of state law, to the review team for purposes of performing its child death and child abuse review responsibilities.

95 Acts, ch 147, §2
Legislative findings and purpose; 95 Acts, ch 147, §1
NEW section

135.63 Certificate of need required — exclusions.

1. A new institutional health service or changed institutional health service shall not be offered or

developed in this state without prior application to the department for and receipt of a certificate of need, pursuant to this division. The application shall be made upon forms furnished or prescribed by the department and shall contain such information as the department may require under this division. The application shall be accompanied by a fee equivalent to three-tenths of one percent of the anticipated cost of the project. The fee shall be remitted by the department to the treasurer of state, who shall place it in the general fund of the state. If an application is voluntarily withdrawn within thirty calendar days after submission, seventy-five percent of the application fee shall be refunded; if the application is voluntarily withdrawn more than thirty but within sixty days after submission, fifty percent of the application fee shall be refunded; if the application is withdrawn voluntarily more than sixty days after submission, twenty-five percent of the application fee shall be refunded. Notwithstanding the required payment of an application fee under this subsection, an applicant for a new institutional health service or a changed institutional health service offered or developed by an intermediate care facility for the mentally retarded or an intermediate care facility for the mentally ill as defined pursuant to section 135C.1 is exempt from payment of the application fee.

2. This division shall not be construed to augment, limit, contravene, or repeal in any manner any other statute of this state which may authorize or relate to licensure, regulation, supervision, or control of, nor to be applicable to:

a. Private offices and private clinics of an individual physician, dentist or other practitioner or group of health care providers, except as provided by section 135.61, subsection 18, paragraphs "g" and "h", and subsections 20 and 21.

b. Dispensaries and first aid stations, located within schools, businesses or industrial establishments, which are maintained solely for the use of students or employees of those establishments and which do not contain inpatient or resident beds that are customarily occupied by the same individual for more than twenty-four consecutive hours.

c. Establishments such as motels, hotels, and boarding houses which provide medical, nursing personnel, and other health related services as an incident to their primary business or function.

d. The remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination.

e. A health maintenance organization or combination of health maintenance organizations or an institutional health facility controlled directly or indirectly by a health maintenance organization or combination of health maintenance organizations, except when the health maintenance organization or combination of health maintenance organizations does any of the following:

(1) Constructs, develops, renovates, relocates, or otherwise establishes an institutional health facility.

(2) Acquires major medical equipment as provided by section 135.61, subsection 18, paragraphs "i" and "j".

f. A residential care facility, as defined in section 135C.1, including a residential care facility for the mentally retarded, notwithstanding any provision in this division to the contrary.

g. A reduction in bed capacity of an institutional health facility, notwithstanding any provision in this division to the contrary, if all of the following conditions exist:

(1) The institutional health facility reports to the department the number and type of beds reduced on a form prescribed by the department at least thirty days before the reduction. In the case of a health care facility, the new bed total must be consistent with the number of licensed beds at the facility. In the case of a hospital, the number of beds must be consistent with bed totals reported to the department of inspections and appeals for purposes of licensure and certification.

(2) The institutional health facility reports the new bed total on its next annual report to the department.

If these conditions are not met, the institutional health facility is subject to review as a "new institutional health service" or "changed institutional health service" under section 135.61, subsection 18, paragraph "d", and subject to sanctions under section 135.73. If the institutional health facility reestablishes the deleted beds at a later time, review as a "new institutional health service" or "changed institutional health service" is required pursuant to section 135.61, subsection 18, paragraph "d".

h. The deletion of one or more health services, previously offered on a regular basis by an institutional health facility or health maintenance organization, notwithstanding any provision of this division to the contrary, if all of the following conditions exist:

(1) The institutional health facility or health maintenance organization reports to the department the deletion of the service or services at least thirty days before the deletion on a form prescribed by the department.

(2) The institutional health facility or health maintenance organization reports the deletion of the service or services on its next annual report to the department.

If these conditions are not met, the institutional health facility or health maintenance organization is subject to review as a "new institutional health service" or "changed institutional health service" under section 135.61, subsection 18, paragraph "f", and subject to sanctions under section 135.73.

If the institutional health facility or health maintenance organization reestablishes the deleted service or services at a later time, review as a "new institutional health service" or "changed institutional health service" may be required pursuant to section 135.61, subsection 18.

i. A residential program exempt from licensing as a health care facility under chapter 135C in accordance with section 135C.6, subsection 8.

3. This division shall not be construed to be applicable to a health care facility operated by and for the exclusive use of members of a religious order, which does not admit more than two individuals to the facility from the general public, and which was in operation prior to July 1, 1986. However, this division is applicable to such a facility if the facility is involved in the offering or developing of a new or changed institutional health service on or after July 1, 1986.

4. For the period beginning July 1, 1995, and ending June 30, 1997, the department shall not process applications for and the council shall not consider a new or changed institutional health service for an intermediate care facility for the mentally retarded except as provided in this subsection.

a. For the period beginning July 1, 1995, and ending June 30, 1997, the department and council shall process applications and consider applications if either of the following conditions are met:

(1) An institutional health facility is reducing the size of the facility's intermediate care facility for the mentally retarded program and wishes to convert an existing number of the facility's approved beds in that program to smaller living environments in accordance with state policies in effect regarding the size and location of such facilities.

(2) An institutional health facility proposes to locate a new intermediate care facility for the mentally retarded in an area of the state identified by the department of human services as underserved by intermediate care facility for the mentally retarded beds.

b. Both of the following requirements shall apply to an application considered under this section:

(1) The new or changed beds shall not result in an increase in the total number of medical assistance certified intermediate care facility for the mentally retarded beds in the state as of July 1, 1994.

(2) A letter of support for the application is provided by the director of human services and the county board of supervisors, or the board's designee, in the county in which the beds would be located.

95 Acts, ch 120, §1
NEW subsection 4

135.107 Center for rural health and primary care established — duties.

1. The center for rural health and primary care is established within the department. There is established an advisory committee to the center for rural health and primary care consisting of one representative, approved by the respective agency, of each of the following agencies: the department of agriculture and land stewardship, the Iowa department of public health, the department of inspections and appeals, the national institute for rural health policy, the rural health resource center, the institute of agricultural medicine and occupational health, and the Iowa state association of counties. The governor

shall appoint two representatives of consumer groups active in rural health issues and a representative of each of two farm organizations active within the state, a representative of an agricultural business in the state, a practicing rural family physician, a practicing rural physician assistant, a practicing rural advanced registered nurse practitioner, and a rural health practitioner who is not a physician, physician assistant, or advanced registered nurse practitioner, as members of the advisory committee. The advisory committee shall also include as members two state representatives, one appointed by the speaker of the house of representatives and one by the minority leader of the house, and two state senators, one appointed by the majority leader of the senate and one by the minority leader of the senate.

The advisory committee shall regularly meet with the administrative head of the center as well as the director of the center for agricultural health and safety established under section 262.78. The head of the center and the director of the center for agricultural health and safety shall consult with the advisory committee and provide the committee with relevant information regarding their agencies.

2. The center for rural health and primary care shall do all of the following:

a. Provide technical planning assistance to rural communities and counties exploring innovative means of delivering rural health services through community health services assessment, planning, and implementation, including but not limited to hospital conversions, cooperative agreements among hospitals, physician and health practitioner support, recruitment and retention of primary health care providers, public health services, emergency medical services, medical assistance facilities, rural health care clinics, and alternative means which may be included in the long-term community health services assessment and developmental plan. The center for rural health and primary care shall encourage collaborative efforts of the local boards of health, hospital governing boards, and other public and private entities located in rural communities to adopt a long-term community health services assessment and developmental plan pursuant to rules adopted by the department and perform the duties required of the Iowa department of public health in section 135B.33.

b. Provide technical assistance to assist rural communities in improving medicare reimbursements through the establishment of rural health clinics, defined pursuant to 42 U.S.C. § 1395(x), and distinct part skilled nursing facility beds.

c. Coordinate services to provide research for the following items:

(1) Examination of the prevalence of rural occupational health injuries in the state.

(2) Assessment of training and continuing education available through local hospitals and others relating to diagnosis and treatment of diseases associated with rural occupational health hazards.

(3) Determination of continuing education support necessary for rural health practitioners to diag-

nose and treat illnesses caused by exposure to rural occupational health hazards.

(4) Determination of the types of actions that can help prevent agricultural accidents.

(5) Surveillance and reporting of disabilities suffered by persons engaged in agriculture resulting from diseases or injuries, including identifying the amount and severity of agricultural-related injuries and diseases in the state, identifying causal factors associated with agricultural-related injuries and diseases, and indicating the effectiveness of intervention programs designed to reduce injuries and diseases.

d. Cooperate with the center for agricultural health and safety established under section 262.78, the center for health effects of environmental contamination established under section 263.17, and the department of agriculture and land stewardship. The agencies shall coordinate programs to the extent practicable.

e. Administer grants for farm safety education efforts directed to rural families for the purpose of preventing farm-related injuries to children.

3. The center for rural health and primary care shall establish a primary care provider recruitment and retention endeavor, to be known as PRIME-CARRE. The endeavor shall include a community grant program, a primary care provider loan repayment program, a primary care provider community scholarship program, and the establishment of area health education centers. The endeavor shall be developed and implemented in a manner to promote and accommodate local creativity in efforts to recruit and retain health care professionals to provide services in the locality. The focus of the endeavor shall be to promote and assist local efforts in developing health care provider recruitment and retention programs. Eligibility under any of the programs established under the primary care provider recruitment and retention endeavor shall be based upon a community health services assessment completed under subsection 2, paragraph "a". A community or region, as applicable, shall submit a letter of intent to conduct a community health services assessment and to apply for assistance under this subsection. The letter shall be in a form and contain information as determined by the center. A letter of intent shall be submitted to the center by January 1 preceding the fiscal year for which an application for assistance is to be made. Assistance under this subsection shall not be granted until such time as the community or region making application has completed the community health services assessment and adopted a long-term community health services assessment and developmental plan. In addition to any other requirements, a developmental plan shall include a clear commitment to informing high school students of the health care opportunities which may be available to such students.

The center for rural health and primary care shall seek additional assistance and resources from other state departments and agencies, federal agencies and

grant programs, private organizations, and any other person, as appropriate. The center is authorized and directed to accept on behalf of the state any grant or contribution, federal or otherwise, made to assist in meeting the cost of carrying out the purpose of this subsection. All federal grants to and the federal receipts of the center are appropriated for the purpose set forth in such federal grants or receipts. Funds appropriated by the general assembly to the center for implementation of this subsection shall first be used for securing any available federal funds requiring a state match, with remaining funds being used for the community grant program.

The center for rural health and primary care may, to further the purposes of this subsection, provide financial assistance in the form of grants to support the effort of a community which is clearly part of the community's long-term community health services assessment and developmental plan. Efforts for which such grants may be awarded include, but are not limited to, the procurement of clinical equipment, clinical facilities, and telecommunications facilities, and the support of locum tenens arrangements and primary care provider mentor programs.

a. Community grant program. The center for rural health and primary care shall adopt rules establishing an application process to be used by the center to establish a grant assistance program as provided in this paragraph, and establishing the criteria to be used in evaluating the applications. Selection criteria shall include a method for prioritizing grant applications based on illustrated efforts to meet the health care provider needs of the locality and surrounding area. Such assistance may be in the form of a forgivable loan, grant, or other nonfinancial assistance as deemed appropriate by the center. An application submitted shall contain a commitment of at least a dollar-for-dollar match of the grant assistance. Application may be made for assistance by a single community or group of communities.

Grants awarded under the program shall be subject to the following limitations:

(1) Ten thousand dollars for a single community or region with a population of ten thousand or less. An award shall not be made under this program to a community with a population of more than ten thousand.

(2) An amount not to exceed one dollar per capita for a region in which the population exceeds ten thousand. For purposes of determining the amount of a grant for a region, the population of the region shall not include the population of any community with a population of more than ten thousand located in the region.

b. Primary care provider loan repayment program.

(1) A primary care provider loan repayment program is established to increase the number of health professionals practicing primary care in federally designated health professional shortage areas of the state. Under the program, loan repayment may be made to a recipient for educational expenses incurred

while completing an accredited health education program directly related to obtaining credentials necessary to practice the recipient's health profession.

(2) The center for rural health and primary care shall adopt rules relating to the establishment and administration of the primary care provider loan repayment program. Rules adopted pursuant to this paragraph shall provide, at a minimum, for all of the following:

(a) Determination of eligibility requirements and qualifications of an applicant to receive loan repayment under the program, including but not limited to years of obligated service which shall be for a minimum of ten years unless federal requirements for the program require differently, clinical practice requirements, and residency requirements. Loan repayment under the program shall not be approved for a health provider whose license or certification is restricted by a medical regulatory authority of any jurisdiction of the United States, other nations, or territories.

(b) Identification of federally designated health professional shortage areas of the state and prioritization of such areas according to need.

(c) Determination of the amount and duration of the loan repayment an applicant may receive, giving consideration to the availability of funds under the program, and the applicant's outstanding educational loans and professional credentials.

(d) Determination of the conditions of loan repayment applicable to an applicant.

(e) Enforcement of the state's rights under a loan repayment program contract, including the commencement of any court action.

(f) Cancellation of a loan repayment program contract for reasonable cause.

(g) Participation in federal programs supporting repayment of loans of health care providers and acceptance of gifts, grants, and other aid or amounts from any person, association, foundation, trust, corporation, governmental agency, or other entity for the purposes of the program.

(h) Upon availability of state funds, determine eligibility criteria and qualifications for participating communities and applicants not located in federally designated shortage areas.

(i) Other rules as necessary.

(3) The center for rural health and primary care may enter into an agreement under chapter 28E with the college student aid commission for the administration of this program.

c. Primary care provider community scholarship program.

(1) A primary care provider community scholarship program is established to recruit and to provide scholarships to train primary health care practitioners in federally designated health professional shortage areas of the state. Under the program, scholarships may be awarded to a recipient for educational expenses incurred while completing an accredited health education program directly related to obtaining the credentials necessary to practice the recipient's health profession.

(2) The department shall adopt rules relating to the establishment and administration of the primary care provider community scholarship program. Rules adopted pursuant to this paragraph shall provide, at a minimum, for all of the following:

(a) Determination of eligibility requirements and qualifications of an applicant to receive scholarships under the program, including but not limited to years of obligated service which shall be for a minimum of ten years unless federal requirements for the program require differently, clinical practice requirements, and residency requirements.

(b) Identification of federally designated health professional shortage areas of the state and prioritization of such areas according to need.

(c) Determination of the amount of the scholarship an applicant may receive.

(d) Determination of the conditions of scholarship to be awarded to an applicant.

(e) Enforcement of the state's rights under a scholarship contract, including the commencement of any court action.

(f) Cancellation of a scholarship contract for reasonable cause.

(g) Participation in federal programs supporting scholarships for health care providers and acceptance of gifts, grants, and other aid or amounts from any person, association, foundation, trust, corporation, governmental agency, or other entity for the purposes of the program.

(h) Upon availability of state funds, determination of eligibility criteria and qualifications for participating communities and applicants not located in federally designated shortage areas.

(i) Other rules as necessary.

(3) The center for rural health and primary care may enter into an agreement under chapter 28E with the college student aid commission for the administration of this program.

d. Area health education centers.

(1) The Iowa department of public health, in cooperation with a primary care collaborative effort including the university of Iowa college of medicine, the university of osteopathic medicine and health sciences, and other primary care professional educational institutions in Iowa, shall develop and establish area health education centers. The effort shall involve making application for a federal grant under 42 U.S.C. § 293j, as prescribed by that section.

(2) Area health education centers shall, at a minimum, do all of the following:

(a) Provide initial and continuing education opportunities to primary care providers.

(b) Allow health professionals to consult with specialists, scholars, peers, and other health care professionals.

(c) Enable health professionals to access medical libraries and other research resources.

(d) Provide for enhanced opportunities for professional student programs, internships and residencies in primary care in rural areas.

(3) Points of access to area health education cen-

ters shall be geographically distributed across the state to improve services to all rural primary health care providers. Area health education centers shall utilize, to the extent feasible, current university residency programs, existing health care facilities, existing educational institutions, the Iowa communications network, and other appropriate resources to ensure access.

(4) Implementation of this lettered paragraph is contingent upon the receipt of federal funding awarded specifically for the implementation of area health education centers.

4. The director of public health shall establish a primary care collaborative work group to coordinate all statewide recruitment and retention activities established pursuant to this section and to make recommendations to the department and the center for rural health and primary care relating to the implementation of subsection 3. Membership of the work group shall consist, at a minimum, of representatives

from the university of Iowa college of medicine, university of osteopathic medicine and health sciences, university of Iowa physician assistant school, university of Iowa nurse practitioner school, university of osteopathic medicine and health sciences physician assistant program, Iowa-Nebraska primary care association, Iowa medical society, Iowa osteopathic medical association, Iowa chapter of American college of osteopathic family physicians, Iowa academy of family physicians, nurse practitioner association, Iowa nurses association, Iowa hospital association, and Iowa physicians assistants association.

5. The department and the center for rural health and primary care shall submit a written report annually to the general assembly on or before February 1 concerning the implementation and coordination of all efforts of the primary care provider recruitment and retention endeavor established in subsection 3.

95 Acts, ch 67, §10

Subsection 1, unnumbered paragraph 2 amended

CHAPTER 135B

LICENSURE AND REGULATION OF HOSPITALS

135B.9 Inspections — protection and advocacy agency investigations.

The department shall make or cause to be made inspections as it deems necessary in order to determine compliance with applicable rules.

In the state hospital-schools and state mental health institutes operated by the department of human services, the designated protection and advocacy agency as provided in section 135C.2, subsection 4, shall have the authority to investigate all complaints of abuse and neglect of persons with devel-

opmental disabilities or mental illnesses if the complaints are reported to the protection and advocacy agency or if there is probable cause to believe that the abuse has occurred. Such authority shall include the examination of all records pertaining to the care provided to the residents and contact or interview with any resident, employee, or any other person who might have knowledge about the operation of the institution.

95 Acts, ch 51, §1

Unnumbered paragraph 1 amended

CHAPTER 135C

HEALTH CARE FACILITIES

135C.2 Purpose — rules — special classifications — protection and advocacy agency.

1. The purpose of this chapter is to promote and encourage adequate and safe care and housing for individuals who are aged or who, regardless of age, are infirm, convalescent, or mentally or physically dependent, by both public and private agencies by providing for the adoption and enforcement of rules and standards:

a. For the housing, care and treatment of individuals in health care facilities, and

b. For the location, construction, maintenance, renovation, and sanitary operation of such health care facilities which will promote safe and adequate

care of individuals in such homes so as to further the health, welfare and safety of such individuals.

2. Rules and standards prescribed, promulgated and enforced under this chapter shall not be arbitrary, unreasonable or confiscatory and the department or agency prescribing, promulgating or enforcing such rules or standards shall have the burden of proof to establish that such rules or standards meet such requirements and are consistent with the economic problems and conditions involved in the care and housing of persons in health care facilities.

3. *a.* The department shall establish by administrative rule the following special classifications:

(1) Within the residential care facility category, a

special license classification for residential facilities intended to serve persons with mental illness.

(2) Within the nursing facility category, a special license classification for nursing facilities which designate and dedicate the facility or a special unit within the facility to provide care for persons who suffer from chronic confusion or a dementing illness. A nursing facility which designates and dedicates the facility or a special unit within the facility for the care of persons who suffer from chronic confusion or a dementing illness shall be specially licensed. For the purposes of this subsection, "designate" means to identify by a distinctive title or label and "dedicate" means to set apart for a definite use or purpose and to promote that purpose.

b. The department may also establish by administrative rule special classifications within the residential care facility, intermediate care facility for the mentally ill, intermediate care facility for the mentally retarded, or nursing facility categories, for facilities intended to serve individuals who have special health care problems or conditions in common. Rules establishing a special classification shall define the problem or condition to which the special classification is relevant and establish requirements for an approved program of care commensurate with the problem or condition. The rules may grant special variances or considerations to facilities licensed within the special classification.

c. The rules adopted for intermediate care facilities for the mentally retarded shall be consistent with, but no more restrictive than, the federal standards for intermediate care facilities for the mentally retarded established pursuant to the federal Social Security Act, § 1905(c)(d), as codified in 42 U.S.C. § 1396d, in effect on January 1, 1989. However, in order to be licensed the state fire marshal must certify to the department an intermediate care facility for the mentally retarded as meeting the applicable provisions of either the health care occupancies chapter or the residential board and care chapter of the life safety code of the national fire protection association, 1985 edition. The department shall adopt additional rules for intermediate care facilities for the mentally retarded pursuant to section 135C.14, subsection 8.

d. Notwithstanding the limitations set out in this subsection regarding rules for intermediate care facilities for the mentally retarded, the department shall consider the federal interpretive guidelines issued by the federal health care financing administration when interpreting the department's rules for intermediate care facilities for the mentally retarded. This use of the guidelines is not subject to the rulemaking provisions of sections 17A.4 and 17A.5, but the guidelines shall be published in the Iowa administrative bulletin and the Iowa administrative code.

4. The protection and advocacy agency designated in the state, under Pub. L. No. 98-527, the Developmental Disabilities Act of 1984, Pub. L. No.

99-319, the Protection and Advocacy for Mentally Ill Individuals Act of 1986, and Pub. L. No. 100-146, the federal Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, is recognized as an agency legally authorized and constituted to ensure the implementation of the purposes of this chapter for populations under its authority and in the manner designated by Pub. L. No. 98-527, Pub. L. No. 99-319, and Pub. L. No. 100-146 and in the assurances of the governor of the state.

5. The department shall establish a special classification within the residential care facility category in order to foster the development of residential care facilities which serve persons with mental retardation, chronic mental illness, a developmental disability, or brain injury, as described under section 225C.26, and which contain five or fewer residents. A facility within the special classification established pursuant to this subsection is exempt from the requirements of section 135.63. The department shall adopt rules which are consistent with rules previously developed for the waiver demonstration project pursuant to 1986 Iowa Acts, chapter 1246, section 206, and which include all of the following provisions:

a. A facility provider under the special classification must comply with rules adopted by the department for the special classification. However, a facility provider which has been accredited by the accreditation council for services to persons with mental retardation and other developmental disabilities shall be deemed to be in compliance with the rules adopted by the department.

b. A facility must be located in an area zoned for single or multiple-family housing or in an unincorporated area and must be constructed in compliance with applicable local requirements and the rules adopted for the special classification by the state fire marshal in accordance with the concept of the least restrictive environment for the facility residents. The rules adopted by the state fire marshal for the special classification shall be no more restrictive than the rules adopted by the state fire marshal for demonstration waiver project facilities pursuant to 1986 Iowa Acts, chapter 1246, section 206, subsection 2. Local requirements shall not be more restrictive than the rules adopted for the special classification by the state fire marshal and the state building code requirements for single or multiple-family housing.

c. Facility provider plans for the facility's accessibility to residents must be in place.

d. A written plan must be in place which documents that a facility meets the needs of the facility's residents pursuant to individual program plans developed according to age appropriate and least restrictive program requirements.

e. A written plan must be in place which documents that a facility's residents have reasonable access to employment or employment-related training, education, generic community resources, and integrated opportunities to promote interaction with the community.

f. A committee of not more than nine members must be established to provide monitoring of the special classification and the rules and procedures adopted regarding the special classification. The recommendations of the committee are subject to the approval of the director. The committee shall include but is not limited to representatives designated by each of the following:

- (1) The association for retarded citizens of Iowa.
- (2) The Iowa association of rehabilitation and residential facilities.
- (3) The governor's planning council for developmental disabilities.
- (4) The mental health and developmental disabilities commission created in section 225C.5.
- (5) The alliance for the mentally ill of Iowa.
- (6) The Iowa state association of counties.
- (7) The state fire marshal.

g. The facilities licensed under this subsection shall be eligible for funding utilized by other licensed residential care facilities for the mentally retarded, or licensed residential care facilities for the mentally ill, including but not limited to funding under or from the federal social services block grant, the state

supplementary assistance program, state mental health and developmental disabilities services funds, and county funding provisions.

6. *a.* This chapter shall not apply to adult day care services provided in a health care facility. However, adult day care services shall not be provided by a health care facility to persons requiring a level of care which is higher than the level of care the facility is licensed to provide.

b. The level of care certification provisions pursuant to sections 135C.3 and 135C.4, the license application and fee provisions pursuant to section 135C.7, and the involuntary discharge provisions pursuant to section 135C.14, subsection 8, shall not apply to respite care services provided in a health care facility. However, respite care services shall not be provided by a health care facility to persons requiring a level of care which is higher than the level of care the facility is licensed to provide.

c. The department shall adopt rules to implement this subsection.

95 Acts, ch 67, §11
Subsection 5, paragraph g amended

CHAPTER 135H

PSYCHIATRIC MEDICAL INSTITUTIONS FOR CHILDREN

135H.8A Provisional license.

The department may issue a provisional license, effective for not more than one year, to a licensee whose psychiatric institution does not meet the requirements of this chapter, if, prior to issuance of the license, written plans to achieve compliance with the

applicable requirements are submitted to and approved by the department. The plans shall specify the deadline for achieving compliance.

95 Acts, ch 51, §2
NEW section

CHAPTER 139B

EMERGENCY CARE PROVIDERS — EXPOSURE TO DISEASE

139B.1 Emergency care provider notification.

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

a. “*Contagious or infectious disease*” means hepatitis in any form, meningococcal disease, tuberculosis, and any other disease with the exception of AIDS or HIV infection as defined in section 141.21, determined to be life-threatening to a person exposed to the disease as established by rules adopted by the department based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control of the United States department of health and human services.

b. “*Department*” means the Iowa department of public health.

c. “*Designated officer*” means a person who is designated by a department, agency, division, or service organization to act as an infection control liaison officer.

d. “*Emergency care provider*” means a person who is trained and authorized by federal or state law to provide emergency medical assistance or treatment, for compensation or in a voluntary capacity, including but not limited to all of the following:

(1) An emergency medical care provider as defined in section 147A.1.

- (2) A health care provider as defined in this section.
- (3) A fire fighter.
- (4) A peace officer.

"Emergency care provider" also includes a person who renders direct emergency aid without compensation.

e. "Exposure" means the risk of contracting disease.

f. "Health care provider" means a person licensed or certified under chapter 148, 148C, 150, 150A, 152, or 153 to provide professional health care service to a person during the person's medical care, treatment, or confinement.

2. a. A hospital licensed under chapter 135B shall have written policies and procedures for notification of an emergency care provider who renders assistance or treatment to an individual when in the course of admission, care, or treatment of the individual the individual is diagnosed or is confirmed as having a contagious or infectious disease.

b. If an individual is diagnosed or confirmed as having a contagious or infectious disease, the hospital shall notify the designated officer of an emergency care provider service who shall notify persons involved in attending or transporting the individual. For blood-borne contagious or infectious diseases, notification shall only take place upon filing of an exposure report form with the hospital. The exposure report form may be incorporated into the Iowa pre-hospital care report, the Iowa prehospital advanced care report, or a similar report used by an ambulance, rescue, or first responder service or law enforcement agency.

c. A person who renders direct emergency aid without compensation and is exposed to an individual who has a contagious or infectious disease shall also receive notification from the hospital upon the filing with the hospital of an exposure report form developed by the department.

d. The notification shall advise the emergency care provider of possible exposure to a particular contagious or infectious disease and recommend that the provider seek medical attention. The notification shall be provided as soon as is reasonably possible

following determination that the individual has a contagious or infectious disease.

e. This subsection does not require a hospital to administer a test for the express purpose of determining the presence of a contagious or infectious disease. The notification shall not include the name of the individual with the contagious or infectious disease unless the individual consents.

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

3. A health care provider may provide the notification required of hospitals in this section to emergency care providers if an individual who has a contagious or infectious disease is delivered by an emergency care provider to the office or clinic of a health care provider for treatment. The notification shall not include the name of the individual who has the contagious or infectious disease unless the individual consents.

4. This section does not preclude a hospital from providing notification to an emergency care provider or health care provider under circumstances in which the hospital's policy provides for notification of the hospital's own employees of exposure to a contagious or infectious disease that is not life-threatening if the report does not reveal a patient's name unless the patient consents.

5. A hospital or health care provider or other person participating in good faith in making a report under the notification provisions of this section or in notifying its own employees under procedures consistent with this section or in failing to make a report under this section is immune from liability, civil or criminal, which may otherwise be incurred or imposed.

6. A hospital's or health care provider's duty of notification under this section is not continuing but is limited to a diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of emergency assistance or treatment to which notification under this section applies.

95 Acts, ch 41, §6
Subsection 1, paragraph d amended

CHAPTER 141

ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

141.22A Emergency care provider notification — penalty.

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

a. "Emergency care provider" means a person who is trained and authorized by federal or state law to provide emergency medical assistance or treatment, for compensation or in a voluntary capacity, including but not limited to all of the following:

(1) An emergency medical care provider as defined in section 147A.1.

(2) A health care provider as defined in this section.

(3) A fire fighter.

(4) A peace officer.

"Emergency care provider" also includes a person who renders emergency aid without compensation.

b. "Health care provider" means a person licensed or certified under chapter 148, 148C, 150, 150A, 152,

or 153 to provide professional health care service to a person during the person's medical care, treatment, or confinement.

c. "*HIV infection*" means HIV infection or AIDS as defined in section 141.21.

d. "*Infectious bodily fluids*" means bodily fluids capable of transmitting HIV infection as determined by the centers for disease control of the United States department of health and human services and adopted by rule of the department.

e. "*Significant exposure*" means the risk of contracting HIV infection by means of exposure to a person's infectious bodily fluids in a manner capable of transmitting HIV infection as determined by the centers for disease control of the United States department of health and human services and adopted by rule of the department.

2. A hospital licensed under chapter 135B shall provide notification to an emergency care provider who renders assistance or treatment to an individual, following submission of a significant exposure report by the emergency care provider to the hospital and a diagnosis or confirmation by the attending physician that the individual has HIV infection, and determination that the exposure reported was a significant exposure as defined pursuant to this section. The notification shall advise the emergency care provider of possible exposure to HIV infection. Notification shall be made in accordance with both of the following:

a. The hospital informs the individual when the individual's condition permits, of the submission of a significant exposure report.

b. The individual consents to serological testing by or voluntarily discloses the individual's HIV status to the hospital and consents to the provision of notification.

Notwithstanding paragraphs "a" and "b" notification shall be made when the individual denies consent for or consent is not reasonably obtainable for serological testing, and in the course of admission, care, and treatment of the individual, the individual is diagnosed or is confirmed as having HIV infection.

3. The hospital shall notify the designated officer of the emergency care provider service who in turn shall notify any of the persons, who submitted a significant exposure report, involved in attending or transporting the individual. The identity of the designated officer shall not be revealed to the individual. The designated officer shall inform the hospital of those parties who received the notification, and following receipt of this information and upon request of the individual, the hospital shall inform the individual of the parties to whom notification was provided.

4. A person who renders direct emergency aid without compensation who is exposed to an individual who has HIV infection shall receive notification directly from the hospital in accordance with the procedures established pursuant to subsection 2. The hospital, upon request of the individual, shall inform the individual of the persons to whom notification was made.

5. The process for notification under this section shall be initiated as soon as is reasonably possible consistent with the centers for disease control of the United States department of health and human services protocols for HIV prophylaxis.

6. The designated officer shall advise the person notified to seek immediate medical attention and shall advise the person of the provisions of confidentiality under this section. The department shall adopt rules to implement this subsection.

7. A health care provider, with consent of the individual, may provide the notification required of hospitals in this section to emergency care providers if an individual who has HIV infection is delivered by an emergency care provider to the office or clinic of the health care provider for treatment. The notification shall take place only upon submission of a significant exposure report form by the emergency care provider to the health care provider and the determination by the health care provider that a significant exposure has occurred.

8. This section does not require or permit a hospital or health care provider to administer a test for the express purpose of determining the presence of HIV infection except that testing may be performed if the individual consents and if the requirements of section 141.22 are satisfied.

9. A hospital or health care provider or other person participating in good faith in making a report under the notification provisions of this section, under procedures similar to this section for notification of its own employees upon filing of a significant exposure report, or in failing to make a report under this section is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

10. Notifications made pursuant to this section shall not disclose the identity of the individual who is diagnosed or confirmed as having HIV infection unless the individual provides a specific written release as provided in section 141.23, subsection 1, paragraph "a".

11. If notification is made under this section, and discloses the identity of the individual who is diagnosed or confirmed as having HIV infection, or otherwise allows the emergency care provider to determine the identity of the individual, the identity of the individual shall be confidential information and shall not be disclosed by the emergency care provider to any other person unless a specific written release is obtained from the individual.

12. An emergency care provider who intentionally or recklessly makes an unauthorized disclosure under this section is subject to a civil penalty of one thousand dollars. The attorney general or the attorney general's designee may maintain a civil action to enforce this section. Proceedings maintained under this section shall provide for the anonymity of the individual and all documentation shall be maintained in a confidential manner.

13. A hospital's duty to notify under this section is not continuing but is limited to the diagnosis of HIV infection made in the course of admission, care,

and treatment following the rendering of emergency assistance or treatment of the individual with the disease.

14. Notwithstanding subsection 13, if, following discharge or completion of care or treatment, an individual, for whom a significant exposure report was submitted but which report did not result in notification, wishes to provide information regarding the individual's HIV infection status to the emergency care provider who submitted the report, the hospital shall provide a procedure for notifying the emergency care provider.

15. The employer of an emergency care provider who submits a significant exposure report under this

section shall pay the costs of HIV testing and counseling for the individual and the emergency care provider. However, the department shall pay the costs of HIV testing and counseling for an emergency care provider who is a person who renders direct emergency aid without compensation.

16. A significant exposure report is a confidential record and the remedies under section 141.24 are applicable to such records.

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

95 Acts, ch 41, §7

Subsection 1, paragraph a amended

CHAPTER 142A

UNIFORM ANATOMICAL GIFT ACT

Repealed by 95 Acts, ch 39, §15; see ch 142C

See §142C.13 for transitional provisions

CHAPTER 142C

UNIFORM ANATOMICAL GIFT ACT

Effective July 1, 1995; for applicability of this chapter and former chapter 142A, see §142C.13

142C.1 Short title.

This chapter shall be known and may be cited as the "*Uniform Anatomical Gift Act*".

95 Acts, ch 39, §1
NEW section

142C.2 Definitions.

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

1. "*Anatomical gift*" means a donation, effective upon or after the death of the donor, of all or part of the human body of the donor.

2. "*Bank or storage organization*" means a person licensed, accredited, certified, registered, or approved under the laws of any state for the procurement, removal, preservation, storage, or distribution of human bodies or parts.

3. "*Decedent*" means a deceased individual and includes a stillborn infant or fetus.

4. "*Document of gift*" means a card signed by an individual donor, a donor's will, or any other written document used by a donor to make an anatomical gift.

5. "*Donor*" means an individual who makes an anatomical gift.

6. "*Enucleator*" means an individual who is certified by the department of ophthalmology of the college of medicine of the university of Iowa, or by the eye bank association of America to remove or process eyes or parts of eyes.

7. "*Hospital*" means a hospital licensed under chapter 135B, or a hospital licensed, accredited, or approved under federal law or the laws of any other state, and includes a hospital operated by the federal government, a state, or a political subdivision of a state, although not required to be licensed under state laws.

8. "*Medical examiner*" means an individual who is appointed as a medical examiner pursuant to section 331.801 or 691.5.

9. "*Organ procurement organization*" means an organization that performs or coordinates the performance of retrieving, preserving, or transplanting organs, which maintains a system of locating prospective recipients for available organs, and which is registered with the united network for organ sharing and designated by the United States secretary of health and human services pursuant to 42 C.F.R. § 485, subpt. D.

10. "*Part*" means organs, tissues, eyes, bones, vessels, whole blood, plasma, blood platelets, blood derivatives, fluid, or any other portion of a human body.

11. "*Person*" means person as defined in section 4.1.

12. "*Physician*" or "*surgeon*" means a physician, surgeon, or osteopathic physician and surgeon, licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

13. "State" means any state, district, commonwealth, territory, or insular possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

14. "Technician" means an individual who is licensed, certified, or approved by an organ procurement organization or who is certified, or approved by a bank or storage organization to procure, remove, process, preserve, store, or distribute a part.

95 Acts, ch 39, §2
NEW section

142C.3 Donation of anatomical gifts — persons who may execute — manner of executing.

1. A competent individual who is at least eighteen years of age, or a minor fourteen through seventeen years of age with written consent of a parent or legal guardian, may make an anatomical gift for one or more of the purposes listed in section 142C.5, may limit an anatomical gift to one or more of the purposes listed in section 142C.5, or may refuse to make an anatomical gift, the gift to take effect upon the death of the donor.

2. An anatomical gift may be made only by completion of a document of gift or as otherwise provided in this section. If the prospective donor is a minor fourteen through seventeen years of age, to be valid, a document of gift shall be signed by the minor and the minor's parent or legal guardian. If the donor is unable to sign the document, the document of gift shall be signed by another individual and by two witnesses, all of whom sign at the direction and in the presence of the donor, the other individual, and the two witnesses. The document of gift shall provide certification that the document has been executed in the prescribed manner.

3. If a donor indicates the wish to become a donor, pursuant to section 321.189, and the indication is attached to or imprinted or noted on an individual's driver's license, the document shall be considered an expression of intent for the purposes of this section.

4. A document of gift may designate a particular physician, technician, or enucleator to perform the appropriate procedures. In the absence of a designation or if the designee is not available to perform the procedures, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, technician, or enucleator to perform the appropriate procedures.

5. A document of gift by will takes effect upon the death of the testator, whether or not the will is probated. For the purposes of a document of gift by will, invalidation of the will for testamentary purposes does not result in the invalidation of the document of gift.

6. A donor may amend or revoke a document of gift by any of the following means:

- a. A signed statement, executed by the donor.
- b. An oral statement made by the donor in the presence of two individuals.
- c. Any form of communication during a terminal illness or injury addressed to a health care profes-

sional, licensed or certified pursuant to chapter 148, 148C, 150A, or 152.

d. The delivery of a written statement, signed by the donor, to a specified donee to whom a document of gift has been delivered.

7. The donor of an anatomical gift made by will may amend or revoke the gift as provided in subsection 6 or in the manner provided for amendment or revocation of wills.

8. A document of gift that is not revoked by the donor prior to the donor's death is irrevocable and does not require the consent or concurrence of any other person after the donor's death.

9. An individual may refuse to make an anatomical gift of the individual's body or part by completing any written document expressing the individual's refusal to make an anatomical gift. During a terminal illness or injury, the refusal may be by an oral statement or other form of unwritten communication addressed to a health care professional licensed or certified under chapter 148, 148C, 150A, or 152.

10. In the absence of a contrary indication by the donor, an anatomical gift of a part does not constitute a refusal to donate other parts nor does it constitute a limitation on an anatomical gift made pursuant to section 142C.4.

11. In the absence of a contrary indication by the donor, a revocation or amendment of an anatomical gift does not constitute a refusal to make a subsequent anatomical gift. If the donor intends a revocation to constitute a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection 9.

12. A document of gift may be in the form of a specific donor card such as an eye donor card, a uniform donor card, a will, or any other written document executed pursuant to this chapter. A uniform donor card shall include the options of donating any and all parts, or any specific part or parts. A uniform donor card may, but is not required to be, in the following form:

UNIFORM DONOR CARD

I,, have made a commitment to be an anatomical gift donor.

I wish to donate the following:

..... Any needed Only the
part following part

Donor Signature Date

95 Acts, ch 39, §3
NEW section

142C.4 Donation of anatomical gifts by individuals other than the donor.

1. Any available member of the following classes of persons, in the order of priority listed, may make an anatomical gift of a decedent's body or parts for an authorized purpose, unless the decedent, at the time of death, has made an unrevoked refusal to make an anatomical gift:

- a. The attorney in fact pursuant to a durable power of attorney for health care.
- b. The spouse of the decedent.
- c. An adult child of the decedent.
- d. A parent of the decedent.
- e. An adult sibling of the decedent.
- f. A grandparent of the decedent.
- g. A guardian of the decedent at the time of the decedent's death.

2. An anatomical gift shall not be made by a person listed in subsection 1 if any of the following conditions apply:

- a. A person in a prior class is available at the time of the death of the decedent to make an anatomical gift.
- b. The person proposing to make an anatomical gift knows of a refusal by the decedent to make an anatomical gift.
- c. The person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

3. An anatomical gift by a person authorized under subsection 1 shall be made by execution of a document of gift signed by the person or by the person's telegraphic, recorded telephonic, or other recorded message, or by any other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient of the communication.

4. An anatomical gift by a person authorized under subsection 1 may be revoked by any member of the same or prior class if, before the procedures have begun for removal of a part from the body of the decedent, the physician, technician, or enucleator performing the removal procedures is notified of the revocation.

5. Failure to make an anatomical gift under subsection 1 does not constitute an objection to the making of an anatomical gift.

95 Acts, ch 39, §4
NEW section

142C.5 Requirements — acceptable donees and purposes for which anatomical gifts may be made.

1. The following persons may be donees of anatomical gifts for the purposes stated:

- a. A hospital, physician, organ procurement organization, or bank or storage organization for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science.
- b. An accredited medical or dental school, college, or university for education, research, or the advancement of medical or dental science.
- c. A designated individual for transplantation or therapy needed by the individual.

2. An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any person listed in subsection 1.

3. If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class listed in section 142C.4, the donee shall not accept the anatomical gift.

95 Acts, ch 39, §5
NEW section

142C.6 Delivery of document of gift.

1. Validity of an anatomical gift does not require delivery of the document of gift during the donor's lifetime.

2. If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after the death of the donor. The document of gift, or a copy, may be deposited in any hospital, organ procurement organization, bank or storage organization, or registry office that accepts the document of gift for safekeeping or for the facilitation of procedures after the death of the donor. If a document is deposited by a donor in a hospital or bank or storage organization, the hospital or bank or storage organization may forward the document to an organ procurement organization which will retain the document for facilitating procedures following the death of the donor. Upon request of a hospital, physician, or surgeon, upon or after the donor's death, the person in possession of the document of gift may allow the hospital, physician, or surgeon to examine or copy the document of gift.

95 Acts, ch 39, §6
NEW section

142C.7 Confidential information.

A hospital, licensed or certified health care professional, pursuant to chapter 148, 148C, 150A, or 152, or medical examiner may release patient information to an organ procurement organization, or bank or storage organization as part of a referral or evaluation of the patient as a donor. Any information regarding a patient, including the patient's identity, however, constitutes confidential medical information and under any other circumstances is prohibited from disclosure without the written consent of the patient or the patient's legal representative.

95 Acts, ch 39, §7
NEW section

142C.8 Rights and duties at death.

1. The rights of a donee created by an anatomical gift are superior to the rights of any other person except with respect to autopsies pursuant to section 142C.11.

2. A donee may accept or reject an anatomical gift of an entire body or part. If the donee accepts the entire body as a gift, the donee, subject to the terms of the gift, may allow embalming and use of the body in funeral services. If the gift is of a part of a body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed with minimal alteration to body appearance. Following

removal of the part, custody of the remainder of the body vests in the person under a legal obligation to dispose of the body.

3. The time of death shall be determined by a physician who attends the donor at death, as defined in section 702.8, or, if no attending physician is present, the physician who certifies the death. The physician who attends the donor at death and the physician who certifies the time of death shall not participate in the procedures for removing or transplanting a part of the decedent. A medical examiner acting to determine the time of death or to certify the death, however, may remove a part if otherwise in accordance with this chapter.

4. If an anatomical gift is made, a physician or technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician.

5. A donee may presume that a document of gift is valid absent actual knowledge to the contrary.

95 Acts, ch 39, §8
NEW section

142C.9 Coordination of procurement and use.

Each hospital in the state shall establish agreements or affiliations for coordination of procurement and use of human parts with an organ procurement organization for any purpose stated in section 142C.5.

95 Acts, ch 39, §9
NEW section

142C.10 Sale or purchase of parts prohibited.

1. A person shall not knowingly, for valuable consideration, purchase or sell a part for transplantation or therapy, if removal of the part is intended to occur after the death of the decedent.

2. Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, distribution, transportation, or implantation of a part.

3. A person who violates this section is guilty of a class "C" felony and is subject to imprisonment not to exceed ten years and notwithstanding section 902.9, to a fine not to exceed two hundred fifty thousand dollars, or both.

95 Acts, ch 39, §10
NEW section

142C.11 Examination, autopsy, liability.

1. An anatomical gift is subject to reasonable examination, including but not limited to an autopsy, human immunodeficiency virus testing, and testing for communicable disease, which is necessary to ensure medical acceptability of the gift for the purposes intended.

2. Anatomical gifts made pursuant to this chapter are subject to the laws governing autopsies.

3. A hospital, health care professional licensed or certified pursuant to chapter 148, 148C, 150A, or 152, a medical examiner, technician, enucleator, or other person, who complies with this chapter in good faith or with the applicable anatomical gift law of another state, or who attempts in good faith to comply, is immune from any liability, civil or criminal, which might result from the making or acceptance of an anatomical gift.

4. An individual who makes an anatomical gift pursuant to section 142C.3 or 142C.4 and the individual's estate are not liable for any injury or damages that may result from the making or the use of the anatomical gift, if the gift is made in good faith.

95 Acts, ch 39, §11
NEW section

142C.12 Service but not a sale.

The procurement, removal, preservation, processing, storage, distribution, or use of parts for the purpose of injecting, transfusing, or transplanting any of the parts into the human body is, for all purposes, the rendition of a service by every person participating in the act, and whether or not any remuneration is paid, is not a sale of the part for any purposes. However, any person that renders such service warrants only under this section that due care has been exercised and that acceptable professional standards of care in providing such service according to the state of the medical arts have been followed. Strict liability, in tort, shall not be applicable to the rendition of such services.

95 Acts, ch 39, §12
NEW section

142C.13 Transitional provisions.

This chapter applies to a document of gift, revocation, or refusal to make an anatomical gift signed by the donor or a person authorized to make or object to the making of an anatomical gift on or after July 1, 1995. A document of gift, revocation, or refusal to make an anatomical gift pursuant to the law in effect prior to July 1, 1995, shall not be affected by the provisions of this chapter.

95 Acts, ch 39, §13; 95 Acts, ch 209, §20
NEW section
Section amended

142C.14 Uniformity of application and construction.

This chapter shall be applied and construed to effectuate the general purpose to make uniform the law with respect to anatomical gifts among states which enact this law.

95 Acts, ch 39, §14
NEW section

CHAPTER 144

VITAL STATISTICS

Modernization of vital statistics records system effective July 1, 1997; cooperation during transition period; 95 Acts, ch 124, §25, 26
See 95 Acts, ch 124, §1-8 and 24-26 for future amendments to ch 144 relating to transfer of vital statistics duties from clerk of the district court effective July 1, 1997

144.12A Declaration of paternity registry.

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

- a. "Child" means a person under eighteen years of age for whom paternity has not been established.
- b. "Court" means the juvenile court.
- c. "Father" means the male, biological parent of a child.
- d. "Putative father" means a man who is alleged to be or who claims to be the biological father of a child born to a woman to whom the man is not married at the time of the birth of the child.
- e. "Registrant" means a person who has registered pursuant to this section and who claims to be the father of a child.
- f. "Registrar" means the state registrar of vital statistics.
- g. "Registry" means the declaration of paternity registry established in this section.

2. a. The registrar shall establish a declaration of paternity registry to record the name, address, social security number, and any other identifying information required by rule of the department of a putative father who wishes to register under this section prior to the birth of a child and no later than the date of the filing of the petition for termination of parental rights.

b. The declaration does not constitute an affidavit of paternity filed pursuant to section 252A.3 and declarations filed shall be maintained by the registrar in a registry distinct from the registry used to maintain affidavits of paternity filed pursuant to section 252A.3. A declaration of paternity filed with the registry may be used as evidence of paternity in an action to establish paternity or to determine a support obligation with respect to the putative father.

c. Failure or refusal to file a declaration of paternity shall not be used as evidence to avoid a legally established obligation of financial support for a child.

3. A person who files a declaration of paternity with the registrar shall include in the declaration all of the following:

a. The person's name, current address, social security number, and any other identifying information requested by the department. If the person filing the declaration of paternity changes the person's address, the person shall notify the registrar of the new address in a manner prescribed by the department.

b. The name, last known address, and social security number, if known, of the mother of the child,

or any other identifying information requested by the department.

c. The name of the child, if known, and the date and location of the birth of the child, if known.

d. The registrar shall accept a declaration of paternity filed in accordance with this section.

e. The registrar shall forward a copy of the declaration to the mother as notification that the person has registered with the registry.

f. The registrar shall accept and immediately register, upon receipt, a declaration of paternity without a fee and without the signature of the biological mother. The registrar may charge a reasonable fee as established by rule of the department for processing searches of the registry.

4. The department shall, upon request, provide the name, address, social security number, and any other identifying information of a registrant to the biological mother of the child; a court; the department of human services; the attorney of any party to an adoption, termination of parental rights, or establishment of paternity or support action; or to the child support recovery unit for an action to establish paternity or support. The information shall not be divulged to any other person and shall be considered a confidential record as to any other person, except upon order of the court for good cause shown. If the registry has not received a declaration of paternity, the department shall provide a written statement to that effect to the person making the inquiry.

5. a. Information provided to the registry may be revoked by the registrant by submission of a written statement signed and acknowledged by the registrant before a notary public.

b. The statement shall include a declaration that to the best of the registrant's knowledge, the registrant is not the father of the named child or that paternity of the true father has been established.

c. Revocation nullifies the registration and the information provided by the registrant shall be expunged.

d. Revocation is effective only following the birth of the child.

6. The department shall adopt rules necessary to implement and administer this section. The rules shall include establishment of sites throughout the state for local distribution of declaration of paternity registration forms.

95 Acts, ch 67, §12

Subsection 5, paragraph c amended

144.13 Birth certificates.

1. Certificates of births shall be filed as follows:
 - a. A certificate of birth for each live birth which occurs in this state shall be filed with the county registrar of the county in which the birth occurs within ten days after the birth and shall be registered by the registrar if it has been completed and filed in accordance with this chapter. However, when a birth occurs in a moving conveyance, a birth certificate shall be filed in the county in which the child was first removed from the conveyance.
 - b. When a birth occurs in an institution, the person in charge of the institution or the person's designated representative shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate, and file the certificate with the county registrar. The physician in attendance or the person in charge of the institution or the person's designee shall certify to the facts of birth and provide the medical information required by the certificate within six days after the birth.
 - c. When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:
 - (1) The physician in attendance at or immediately after the birth.
 - (2) Any other person in attendance at or immediately after the birth.
 - (3) The father or the mother.
 - (4) The person in charge of the premises where the birth occurred.
 - d. The state registrar may transmit to the appropriate local boards of health information from birth certificates for the sole purpose of identifying those children in need of immunizations.
 - e. If an affidavit of paternity is obtained directly

from the county registrar and is filed pursuant to section 252A.3A the county registrar shall forward the original affidavit to the state registrar.

2. If the mother was married either at the time of conception or birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered by the department.

3. If the mother was not married either at the time of conception or birth, the name of the father shall not be entered on the certificate of birth without the written consent of the mother and the person to be named as the father, unless a determination of paternity has been made pursuant to section 252A.3, in which case the name of the father as established shall be entered by the department.

4. The division shall make all of the following available to the child support recovery unit, upon request:

- a. A copy of a child's birth certificate.
- b. The social security numbers of the mother and the father.
- c. A copy of the affidavit of paternity if filed pursuant to section 252A.3A.
- d. Information, other than information for medical and health use only, identified on a child's birth certificate or on an affidavit of paternity filed pursuant to section 252A.3A. The information may be provided as mutually agreed upon by the division and the child support recovery unit, including by automated exchange.

95 Acts, ch 94, §1
Subsection 1, paragraph d amended

CHAPTER 144C**COMMUNITY HEALTH MANAGEMENT INFORMATION SYSTEM****144C.4 Community health management information system governing board established — duties.**

1. A community health management information system governing board is established and shall consist of twelve members, including the following:
 - a. Four individuals representing providers including two individuals representing hospitals as defined in chapter 135B, and two individuals representing physicians as defined in chapters 148 and 150A.
 - b. Six individuals representing consumers of which at least two individuals shall represent employment-based purchasers representing nongovernmental entities purchasing group health plans on behalf of other individuals. Additionally, at least one of the individuals representing employment-based purchasers shall represent self-insured plans.

c. Two individuals representing payors other than a self-insured plan.

2. The commissioner or the commissioner's designee shall serve as an ex officio, nonvoting member of the board.

3. The members of the board shall be appointed by the governor, subject to senate confirmation. Members shall serve three-year staggered terms beginning and ending as provided in section 69.19. Appointments to the board are subject to sections 69.16 and 69.16A. Removal of a member of the board and the filling of a vacancy on the board are governed by chapter 69. The members of the board shall be reimbursed from funds collected by the system for actual and necessary travel and related expenses incurred in the discharge of official duties.

4. The commissioner shall cooperate with the board in the implementation of this chapter and shall

review the procedures and operation of the system as provided in section 144C.5.

5. The board shall develop all public policy positions and operational policies and procedures related to the system. The board shall adopt written policies and procedures necessary to implement and administer this chapter. Policies and procedures adopted by the board are subject to the review and approval of the insurance division.

6. The board shall do all of the following:

a. Define a reporting methodology for the types of information, including severity of illness and outcomes, gathered by the community health management information system, applicable to all Iowa hospitals and hospital discharges, and outpatient and ambulatory care. For purposes of this chapter, data related to severity of illness shall include a severity of illness risk adjustment, patient average length of stay, patient mortality, and average total patient charges. Upon implementation of the severity of illness and outcomes reporting methodology as authorized in this section, the board, through its data advisory committee, may continue to review alternative severity of illness and outcomes measures which may be recommended to the board for use in the data plan.

b. Establish and implement functions as appropriate for the operation of the system consistent with the implementation of the system as provided in section 144C.8.

c. Appoint appropriate advisory committees as necessary including, but not limited to, an ethics and confidentiality review committee, a data advisory committee, a technical advisory committee, and a communications and education committee to provide technical assistance regarding the operation of the system, policies and contractual agreements, and other functions within the authority of the system.

d. Establish a certification process for transaction networks. The board shall only contract with

certified transaction networks for purposes of this chapter.

e. Establish an appropriate network certification fee and any other fees as necessary to maintain the efficient administration of the system and for the repayment of any indebtedness incurred by the board pursuant to this chapter.

f. Establish standards for the electronic transaction submission format, transaction networks, supplemental information requirement transaction forms, computer software, and any other information or procedures necessary to effect the purposes of this chapter.

7. The board may do any of the following:

a. Enter into contracts as necessary to administer the provisions of this chapter.

b. Borrow money to effect the purposes of the system, except that the board shall not have the authority to directly issue any notes or bonds for indebtedness and shall not have the authority to pledge the credit or taxing power of this state.

c. Employ legal counsel and other staff as necessary to effect the purposes of this chapter.

d. Assist health care providers and payors as needed in obtaining necessary equipment and skills to access the system and in implementing the necessary procedures to effect the purposes of this chapter.

e. Enter into agreements consistent with and furthering the intent and purposes of this chapter with similar entities created in other states.

8. The board shall file a written report with the general assembly on or before January 15 of each year concerning the operation of the system. In addition to any other information contained in the report, the board shall include the system's annual operating budget for the coming year and any legislative recommendations which the board believes are necessary and which further the purposes of this chapter.

95 Acts, ch 185, §2

NEW subsection 2 and former subsections 2-7 renumbered as 3-8

CHAPTER 145B

DOGS FOR SCIENTIFIC RESEARCH

145B.3 Dogs held for redemption by owner.

An institution so authorized by the Iowa department of public health may request dogs from a pound. The pound may tender to such institution dogs in its custody seized or held by authority of the state, municipality, or other political subdivision. However, a dog shall not be tendered unless it has been held for redemption by its owner or for sale for a period of not less than three nor more than fifteen days. A dog

lawfully licensed at the time of its seizure shall not be tendered unless its owner consents in writing. Unless a dog is sick or injured or lawfully licensed at the time of seizure, a pound shall not destroy a dog while a request of an authorized institution to that pound is pending.

95 Acts, ch 122, §1
Section amended

CHAPTER 147

GENERAL PROVISIONS, HEALTH-RELATED PROFESSIONS

147.1 Definitions.

For the purpose of this and the following chapters of this subtitle, excluding chapters 152B, 152C, and 152D:

1. *“Department”* shall mean the Iowa department of public health.

2. *“Examining board”* shall mean one of the boards appointed by the governor to give examinations to applicants for licenses.

3. *“Licensed”* or *“certified”* when applied to a physician and surgeon, podiatric physician, osteopath, osteopathic physician and surgeon, physician assistant, psychologist or associate psychologist, chiropractor, nurse, dentist, dental hygienist, optometrist, speech pathologist, audiologist, pharmacist, physical therapist, occupational therapist, practitioner of cosmetology arts and sciences, practitioner of barbering, funeral director, dietitian, marital and family therapist, mental health counselor, or social worker means a person licensed under this subtitle, excluding chapters 152B, 152C, and 152D.

4. *“Peer review”* means evaluation of professional services rendered by a person licensed to practice a profession.

5. *“Peer review committee”* means one or more persons acting in a peer review capacity who also serve as an officer, director, trustee, agent, or member of any of the following:

a. A state or local professional society of a profession for which there is peer review.

b. Any organization approved to conduct peer review by a society as designated in paragraph “a” of this subsection.

c. The medical staff of any licensed hospital.

d. An examining board.

e. The board of trustees of a licensed hospital when performing a function relating to the reporting required by section 147.135, subsection 3.

6. *“Profession”* means medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, practice as a physician assistant, psychology, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, cosmetology arts and sciences, barbering, mortuary science, marital and family therapy, mental health counseling, social work, or dietetics.

95 Acts, ch 41, §8; 95 Acts, ch 108, §3

Subsections 1, 3, 4 and 6 stricken and former subsections 2, 5, and 7–10 renumbered as subsections 1–6

Subsection 3 amended

147.74 Professional titles or abbreviations — false use prohibited.

1. Any person who falsely claims by the use of any professional title or abbreviation, either in writing, cards, signs, circulars, or advertisements, to be a practitioner of a system of the healing arts other than

the one under which the person holds a license or who fails to use the following designations shall be guilty of a simple misdemeanor.

2. A physician or surgeon may use the prefix “Dr.” or “Doctor”, and shall add after the person’s name the letters, “M. D.”

3. An osteopath or osteopathic physician and surgeon may use the prefix “Dr.” or “Doctor”, and shall add after the person’s name the letters, “D. O.”, or the words “osteopath” or “osteopathic physician and surgeon”.

4. A chiropractor may use the prefix “Doctor”, but shall add after the person’s name the letters, “D. C.” or the word, “chiropractor”.

5. A dentist may use the prefix “Doctor”, but shall add after the person’s name the letters “D. D. S.” or the word “dentist” or “dental surgeon”.

6. A podiatric physician may use the prefix “Dr.” but shall add after the person’s name the word “podiatric physician”.

7. A graduate of a school accredited on the board of optometric examiners may use the prefix “Doctor”, but shall add after the person’s name the letters “O. D.”

8. A physical therapist registered or licensed under chapter 148A may use the words “physical therapist” after the person’s name or signify the same by the use of the letters “PT” after the person’s name.

9. A physical therapist assistant licensed under chapter 148A may use the words “physical therapist assistant” after the person’s name or signify the same by use of the letters “PTA” after the person’s name.

10. A psychologist who possesses a doctoral degree and who claims to be a certified practicing psychologist may use the prefix “Doctor” but shall add after the person’s name the word “psychologist”.

11. A speech pathologist or audiologist with a doctoral degree may use the suffix “Ph.D.”, or the prefix “Doctor” or “Dr.” and add after the person’s name the words “speech pathologist” or “audiologist”.

12. A social worker licensed under chapter 154C and this chapter may use the words “licensed social worker” after the person’s name or signify the same by the use of the letters “L. S. W.” after the person’s name.

13. A marital and family therapist licensed under chapter 154D and this chapter may use the words “licensed marital and family therapist” after the person’s name or signify the same by the use of the letters “L. M. F. T.” after the person’s name. A marital and family therapist licensed under chapter 154D and this chapter who possesses a doctoral degree may use the prefix “Doctor” or “Dr.” in conjunction with the person’s name, but shall add after the person’s name the words “licensed marital and family therapist”.

14. A mental health counselor licensed under chapter 154D and this chapter may use the words "licensed mental health counselor" after the person's name. A mental health counselor licensed under chapter 154D and this chapter who possesses a doctoral degree may use the prefix "Doctor" or "Dr." in conjunction with the person's name, but shall add after the person's name the words "licensed mental health counselor".

15. A pharmacist who possesses a doctoral degree recognized by the American council of pharmaceutical education from a college of pharmacy approved by the board of pharmacy examiners or a doctor of philosophy degree in an area related to pharmacy may use the prefix "Doctor" or "Dr." but shall add after the person's name the word "pharmacist" or "Pharm. D."

16. A physician assistant registered or licensed under chapter 148C may use the words "physician assistant" after the person's name or signify the same by the use of the letters "P. A." after the person's name.

17. A massage therapist licensed under chapter 152C may use the words "licensed massage therapist" or the initials "L.M.T." after the person's name.

18. An acupuncturist registered under chapter 148E may use the words "registered acupuncturist" after the person's name.

19. No other practitioner licensed to practice a profession under any of the provisions of this subtitle shall be entitled to use the prefix "Dr." or "Doctor".

95 Acts, ch 108, §4
Subsection 6 amended

147.107 Drug dispensing, supplying, and prescribing — limitations.

1. A person, other than a pharmacist, physician, dentist, podiatric physician, or veterinarian who dispenses as an incident to the practice of the practitioner's profession, shall not dispense prescription drugs or controlled substances.

2. A pharmacist, physician, dentist, or podiatric physician who dispenses prescription drugs, including but not limited to controlled substances, for human use, may delegate nonjudgmental dispensing functions to staff assistants only when verification of the accuracy and completeness of the prescription is determined by the pharmacist or practitioner in the pharmacist's or practitioner's physical presence.

A dentist or podiatric physician who dispenses prescription drugs, other than drug samples, pursuant to this subsection, shall annually register the fact that they dispense prescription drugs with the practitioner's respective examining board. A physician doing so shall register biennially.

A physician, dentist, or podiatric physician who dispenses prescription drugs, other than drug samples, pursuant to this subsection, shall offer to provide the patient with a written prescription that may be dispensed from a pharmacy of the patient's choice or offer to transmit the prescription to a pharmacy of the patient's choice.

3. A physician's assistant or registered nurse may supply when pharmacist services are not reasonably available or when it is in the best interests of the patient, on the direct order of the supervising physician, a quantity of properly packaged and labeled prescription drugs, controlled substances, or contraceptive devices necessary to complete a course of therapy. However, a remote clinic, staffed by a physician's assistant or registered nurse, where pharmacy services are not reasonably available, shall secure the regular advice and consultation of a pharmacist regarding the distribution, storage, and appropriate use of such drugs, substances, and devices.

4. Notwithstanding subsection 3, a physician assistant shall not dispense prescription drugs as an incident to the practice of the supervising physician or the physician assistant, but may supply, when pharmacist services are not reasonably available, or when it is in the best interests of the patient, a quantity of properly packaged and labeled prescription drugs, controlled substances, or medical devices necessary to complete a course of therapy. However, a remote clinic, staffed by a physician assistant, where pharmacy services are not reasonably available, shall secure the regular advice and consultation of a pharmacist regarding the distribution, storage, and appropriate use of such drugs, substances, and devices. Prescription drugs supplied under the provisions of this subsection shall be supplied for the purpose of accommodating the patient and shall not be sold for more than the cost of the drug and reasonable overhead costs, as they relate to supplying prescription drugs to the patient, and not at a profit to the physician or the physician assistant. If prescription drug supplying authority is delegated by a supervising physician to a physician assistant, a nurse or staff assistant may assist the physician assistant in providing that service. Rules shall be adopted by the board of physician assistant examiners, after consultation with the board of pharmacy examiners, to implement this subsection.

5. Notwithstanding subsection 1 and any other provision of this section to the contrary, a physician may delegate the function of prescribing drugs, controlled substances, and medical devices to a physician assistant licensed pursuant to chapter 148C. When delegated prescribing occurs, the supervising physician's name shall be used, recorded, or otherwise indicated in connection with each individual prescription so that the individual who dispenses or administers the prescription knows under whose delegated authority the physician assistant is prescribing. Rules relating to the authority of physician assistants to prescribe drugs, controlled substances, and medical devices pursuant to this subsection shall be adopted by the board of physician assistant examiners, after consultation with the board of medical examiners and the board of pharmacy examiners, as soon as possible after July 1, 1991. The rules shall be reviewed and approved by the physician assistant rules review group created under subsection 7 and shall be adopted in final form by January 1, 1993.

However, the rules shall prohibit the prescribing of schedule II controlled substances which are listed as stimulants or depressants pursuant to chapter 124. If rules are not reviewed and approved by the physician assistant rules review group created under subsection 7 and adopted in final form by January 1, 1993, a physician assistant may prescribe drugs as a delegated act of a supervising physician under rules adopted by the board of physician assistant examiners and subject to the rules review process established in section 148C.7. The board of physician assistant examiners shall be the only board to regulate the practice of physician assistants relating to prescribing and supplying prescription drugs, controlled substances and medical devices, notwithstanding section 148C.6A.

6. Health care providers shall consider the instructions of the physician assistant to be instructions of the supervising physician if the instructions concern duties delegated to the physician assistant by a supervising physician.

7. A physician assistant rules review group is established consisting of two physician assistants selected by the board of physician assistants, two physicians selected by the board of medical examiners, and one physician currently practicing as a supervising physician of physician assistants selected by the four other members of the rules review group no later than August 1, 1991. The rules review group shall select its own chairperson.

The rules review group shall review and approve or disapprove rules proposed for adoption relating to the authority of physician assistants to supply or prescribe drugs, controlled substances, and medical devices pursuant to subsection 5. Approval shall be by a simple majority of the members of the rules review group. A rule shall not become effective without the approval of the rules review group unless otherwise specified under this section.

8. Notwithstanding subsection 1, a family planning clinic may dispense birth control drugs and devices upon the order of a physician. Subsections 2 and 3 do not apply to a family planning clinic under this subsection.

9. Notwithstanding subsection 1, but subject to the limitations contained in subsections 2 and 3, a registered nurse who is licensed and registered as an advanced registered nurse practitioner and who qualifies for and is registered in a recognized nursing specialty may prescribe substances or devices, including controlled substances or devices, if the nurse is engaged in the practice of a nursing specialty regulated under rules adopted by the board of nursing in consultation with the board of medical examiners and the board of pharmacy examiners.

10. Notwithstanding section 147.86, a person, including a pharmacist, who violates this section is guilty of a simple misdemeanor.

95 Acts, ch 108, §5
Subsections 1 and 2 amended

147.136 Scope of recovery.

In an action for damages for personal injury against a physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor, or nurse licensed to practice that profession in this state, or against a hospital licensed for operation in this state, based on the alleged negligence of the practitioner in the practice of the profession or occupation, or upon the alleged negligence of the hospital in patient care, in which liability is admitted or established, the damages awarded shall not include actual economic losses incurred or to be incurred in the future by the claimant by reason of the personal injury, including but not limited to, the cost of reasonable and necessary medical care, rehabilitation services, and custodial care, and the loss of services and loss of earned income, to the extent that those losses are replaced or are indemnified by insurance, or by governmental, employment, or service benefit programs or from any other source except the assets of the claimant or of the members of the claimant's immediate family.

95 Acts, ch 108, §6
Section amended

147.138 Contingent fee of attorney reviewed by court.

In any action for personal injury or wrongful death against any physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor or nurse licensed under this chapter or against any hospital licensed under chapter 135B, based upon the alleged negligence of the licensee in the practice of that profession or occupation, or upon the alleged negligence of the hospital in patient care, the court shall determine the reasonableness of any contingent fee arrangement between the plaintiff and the plaintiff's attorney.

95 Acts, ch 108, §7
Section amended

147.161 Training and certification of first responders, emergency rescue technicians, and emergency medical technicians-ambulance.
Repealed by 95 Acts, ch 41, § 27. See ch 147A.

CHAPTER 147A

EMERGENCY MEDICAL CARE — TRAUMA CARE

SUBCHAPTER I

EMERGENCY MEDICAL CARE

147A.1 Definitions.

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

1. "Board" means the board of medical examiners appointed pursuant to section 147.14, subsection 2.
2. "Department" means the Iowa department of public health.
3. "Director" means the director of the Iowa department of public health.
4. "Emergency medical care" means such medical procedures as:
 - a. Administration of intravenous solutions.
 - b. Intubation.
 - c. Performance of cardiac defibrillation and synchronized cardioversion.
 - d. Administration of emergency drugs as provided by rule by the department.
 - e. Any other medical procedure approved by the department, by rule, as appropriate to be performed by emergency medical care providers who have been trained in that procedure.
5. "Emergency medical care provider" means an individual trained to provide emergency and non-emergency medical care at the first-responder, EMT-basic, EMT-intermediate, EMT-paramedic level, or other certification levels adopted by rule by the department, who has been issued a certificate by the department.
6. "Emergency medical services" or "EMS" means an integrated medical care delivery system to provide emergency and nonemergency medical care at the scene or during out-of-hospital patient transportation in an ambulance.
7. "Emergency medical services instructor" means an individual who has successfully completed an EMS curriculum determined in rules in accordance with chapter 17A by the director and subject to the approval of the state board of health.
8. "Emergency rescue technician" or "ERT" means an individual trained in various rescue techniques including, but not limited to, extrication from vehicles and agricultural rescue, and who has successfully completed a curriculum approved by the department in cooperation with the Iowa fire service institute.
9. "First responder" or "FR" means an individual trained in patient-stabilizing techniques, through the use of initial emergency medical care procedures and skills prior to the arrival of an ambulance, pursuant to rules established by the department and who is currently certified as a first responder by the department.

10. "Physician" means an individual licensed under chapter 148, 150, or 150A.

95 Acts, ch 41, §9
Section stricken and rewritten

147A.2 Council established — terms of office.

An EMS advisory council shall be appointed by the director. Membership of the council shall be comprised of individuals nominated from, but not limited to, the following state or national organizations: Iowa osteopathic medical association, Iowa medical society, American college of emergency physicians, Iowa physician assistant society, Iowa academy of family physicians, university of Iowa hospitals and clinics, Iowa EMS association, Iowa firemen's association, Iowa professional firefighters, EMS education programs committee, EMS regional council, Iowa nurses association, Iowa hospital association, and the Iowa state association of counties.

The EMS advisory council shall advise the director and develop policy recommendations concerning the regulation, administration, and coordination of emergency medical services in the state.

95 Acts, ch 41, §10
NEW section

147A.3 Meetings of the council — quorum — expenses.

Membership, terms of office, quorum, and expenses shall be determined by the director pursuant to chapter 135.

95 Acts, ch 41, §11
NEW section

147A.4 Rulemaking authority.

1. The department shall adopt rules required or authorized by this subchapter pertaining to the operation of ambulance, rescue, and first response services which have received authorization under section 147A.5 to utilize the services of certified emergency medical care providers. These rules shall include, but need not be limited to, requirements concerning physician supervision, necessary equipment and staffing, and reporting by ambulance, rescue, and first response services which have received the authorization pursuant to section 147A.5.

The director, pursuant to rule, may grant exceptions and variances from the requirements of rules adopted under this subchapter for any ambulance, rescue, or first response service. Exceptions or variations shall be reasonably related to undue hardships which existing services experience in complying with this subchapter or the rules adopted pursuant to this subchapter. However, no exception or variance may be granted unless the service has adopted a plan approved by the department prior to July 1, 1996, to

achieve compliance during a period not to exceed seven years with this subchapter and rules adopted pursuant to this subchapter. Services requesting exceptions and variances shall be subject to other applicable rules adopted pursuant to this subchapter.

2. The department shall adopt rules required or authorized by this subchapter pertaining to the examination and certification of emergency medical care providers. These rules shall include, but need not be limited to, requirements concerning prerequisites, training, and experience for emergency medical care providers and procedures for determining when individuals have met these requirements. The department shall adopt rules to recognize the previous EMS training and experience of first responders and emergency medical technicians to provide for an equitable transition to the EMT-basic certification. The department may require additional training and examinations as necessary and appropriate to ensure that individuals seeking certification have met the EMT-basic knowledge and skill requirements. The department shall consult with the board concerning these rules.

3. The department shall establish the fee for the examination of the emergency medical care providers to cover the administrative costs of the examination program.

95 Acts, ch 41, §12

Department to pay certain training and equipment costs attributable to 1995 amendments; 95 Acts, ch 41, §28

Section amended

147A.5 Applications for emergency medical care services — approval — denial, probation, suspension, or revocation.

1. An ambulance, rescue, or first response service in this state that desires to provide emergency medical care in the out-of-hospital setting shall apply to the department for authorization to establish a program for delivery of the care at the scene of an emergency, during transportation to a hospital, during transfer from one medical care facility to another or to a private residence, or while in the hospital emergency department, and until care is directly assumed by a physician or by authorized hospital personnel.

2. The department shall approve an application submitted in accordance with subsection 1 when the department is satisfied that the program proposed by the application will be operated in compliance with this subchapter and the rules adopted pursuant to this subchapter.

3. The department may deny an application for authorization, or may place on probation, suspend, or revoke existing authorization if the department finds reason to believe the program has not been or will not be operated in compliance with this subchapter and the rules adopted pursuant to this subchapter, or that there is insufficient assurance of adequate protection for the public. The denial or period of probation, suspension, or revocation shall be effected and may be appealed as provided by section 17A.12.

95 Acts, ch 41, §13

Subsections 1 and 3 amended

147A.6 Emergency medical care provider certificates — renewal.

1. The department, upon application and receipt of the prescribed fee, shall issue a certificate to an individual who has met all of the requirements for emergency medical care provider certification established by the rules adopted under section 147A.4, subsection 2.

2. Emergency medical care provider certificates are valid for the multiyear period determined by the department, unless sooner suspended or revoked. The certificate shall be renewed upon application of the holder and receipt of the prescribed fee if the holder has satisfactorily completed continuing medical education programs as required by rule.

95 Acts, ch 41, §14

Section amended

147A.7 Denial, suspension or revocation of certificates — hearing — appeal.

1. The department may deny an application for issuance or renewal of an emergency medical care provider certificate, or suspend or revoke the certificate when it finds that the applicant or certificate holder is guilty of any of the following acts or offenses:

- a. Negligence in performing authorized services.
- b. Failure to follow the directions of the supervising physician.
- c. Rendering treatment not authorized under this subchapter.
- d. Fraud in procuring certification.
- e. Professional incompetency.
- f. Knowingly making misleading, deceptive, untrue or fraudulent representation in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
- g. Habitual intoxication or addiction to the use of drugs.

- h. Fraud in representations as to skill or ability.
- i. Willful or repeated violations of this subchapter or of rules adopted pursuant to this subchapter.
- j. Violating a statute of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which relates to the practice of an emergency medical care provider. A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.
- k. Having certification to practice as an emergency medical care provider revoked or suspended, or having other disciplinary action taken by a licensing or certifying authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is conclusive or prima facie evidence.

2. If clinical issues are involved, the matter shall be referred to the board for completion of the investigation and the conduct of any disciplinary proceeding pursuant to chapter 17A. The findings of the board shall be the final decision for purposes of section 17A.15 and shall be enforced by the department.

3. A determination of mental incompetence by a court of competent jurisdiction automatically suspends a certificate for the duration of the certificate unless the department orders otherwise.

4. A denial, suspension or revocation under this section shall be effected, and may be appealed in accordance with the rules of the department established pursuant to chapter 272C.

95 Acts, ch 41, §15, 16

Subsection 1, unnumbered paragraph 1 and paragraphs j and k amended

147A.8 Authority of certified emergency medical care provider.

An emergency medical care provider properly certified under this subchapter may:

1. Render emergency and nonemergency medical care, rescue, and lifesaving services in those areas for which the emergency medical care provider is certified, as defined and approved in accordance with the rules of the department, at the scene of an emergency, during transportation to a hospital or while in the hospital emergency department, and until care is directly assumed by a physician or by authorized hospital personnel.

2. Function in any hospital when:

a. Enrolled as a student or participating as a preceptor in a training program approved by the department; or

b. Fulfilling continuing education requirements as defined by rule; or

c. Employed by or assigned to a hospital as a member of an authorized ambulance, rescue, or first response service, by rendering lifesaving services in the facility in which employed or assigned pursuant to the emergency medical care provider's certification and under the direct supervision of a physician, physician assistant, or registered nurse. An emergency medical care provider shall not routinely function without the direct supervision of a physician, physician assistant, or registered nurse. However, when the physician, physician assistant, or registered nurse cannot directly assume emergency care of the patient, the emergency medical care provider may perform without direct supervision emergency medical care procedures for which that individual is certified if the life of the patient is in immediate danger and such care is required to preserve the patient's life; or

d. Employed by or assigned to a hospital as a member of an authorized ambulance, rescue, or first response service to perform nonlifesaving procedures for which those individuals have been trained and are designated in a written job description. Such procedures may be performed after the patient is observed by and when the emergency medical care provider is under the supervision of the physician, physician assistant, or registered nurse and where the procedure may be immediately abandoned without risk to the patient.

The department shall consult with the board concerning rules and training requirements related to this section.

Nothing in this subchapter shall be construed to require any voluntary ambulance, rescue, or first response service to provide a level of care beyond minimum basic care standards.

95 Acts, ch 41, §17

Section amended

147A.9 Remote supervision — emergency communication failure — authorization to initiate emergency procedures.

1. When voice contact or a telemetered electrocardiogram is monitored by a physician, physician's designee, or physician assistant, and direct communication is maintained, an emergency medical care provider may upon order of the monitoring physician or upon standing orders of a physician transmitted by the monitoring physician's designee or physician assistant perform any emergency medical care procedure for which that emergency medical care provider is certified.

2. If communications fail during an emergency or nonemergency situation, the emergency medical care provider may perform any emergency medical care procedure for which that individual is certified and which is included in written protocols if in the judgment of the emergency medical care provider the life of the patient is in immediate danger and such care is required to preserve the patient's life.

3. The department shall adopt rules to authorize medical care procedures which can be initiated in accordance with written protocols prior to the establishment of communication.

4. The department shall consult with the board concerning rules related to this section.

95 Acts, ch 41, §18

Section amended

147A.10 Exemptions from liability in certain circumstances.

1. A physician, physician's designee, advanced registered nurse practitioner, or physician assistant who gives orders, either directly or via communications equipment from some other point, or via standing protocols to an appropriately certified emergency medical care provider, registered nurse, or licensed practical nurse at the scene of an emergency, and an appropriately certified emergency medical care provider, registered nurse, or licensed practical nurse following the orders, are not subject to criminal liability by reason of having issued or executed the orders, and are not liable for civil damages for acts or omissions relating to the issuance or execution of the orders unless the acts or omissions constitute recklessness.

2. A physician, physician's designee, advanced registered nurse practitioner, physician assistant, registered nurse, licensed practical nurse, or emergency medical care provider shall not be subject to civil liability solely by reason of failure to obtain consent before rendering emergency medical, surgical, hospital or health services to any individual, regardless of age, when the patient is unable to give

consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care.

3. An act of commission or omission of any appropriately certified emergency medical care provider, registered nurse, licensed practical nurse, or physician assistant, while rendering emergency medical care under the responsible supervision and control of a physician to a person who is deemed by them to be in immediate danger of serious injury or loss of life, shall not impose any liability upon the certified emergency medical care provider, registered nurse, licensed practical nurse, or physician assistant, the supervising physician, physician designee, advanced registered nurse practitioner, or any hospital, or upon the state, or any county, city or other political subdivision, or the employees of any of these entities; provided that this section shall not relieve any person of liability for civil damages for any act of commission or omission which constitutes recklessness.

95 Acts, ch 41, §19
Section amended

147A.11 Prohibited acts.

1. Any person not certified as required by this subchapter who claims to be an emergency medical care provider, or who uses any other term to indicate or imply that the person is an emergency medical care provider, or who acts as an emergency medical care provider without having obtained the appropriate certificate under this subchapter, is guilty of a class "D" felony.

2. An owner of an unauthorized ambulance, rescue, or first response service in this state who operates or purports to operate an ambulance, rescue, or first response service, or who uses any term to indicate or imply authorization without having obtained the appropriate authorization under this subchapter, is guilty of a class "D" felony.

3. Any person who imparts or conveys, or causes to be imparted or conveyed, or attempts to impart or convey false information concerning the need for assistance of an ambulance, rescue, or first response service or of any personnel or equipment thereof, knowing such information to be false, is guilty of a serious misdemeanor.

95 Acts, ch 41, §20
Subsections 1 and 2 amended

147A.12 Registered nurse exception.

1. This subchapter does not restrict a registered nurse, licensed pursuant to chapter 152, from staffing an authorized ambulance, rescue, or first response service provided the registered nurse can document equivalency through education and additional skills training essential in the delivery of out-of-hospital emergency care. The equivalency shall be accepted when:

a. Documentation has been reviewed and approved at the local level by the medical director of the ambulance, rescue, or first response service in accordance with the rules of the board of nursing developed jointly with the department.

b. Authorization has been granted to that ambulance, rescue, or first response service by the department.

2. Section 147A.10 applies to a registered nurse in compliance with this section.

95 Acts, ch 41, §21
Subsection 1 amended

147A.13 Physician assistant exception.

This subchapter does not restrict a physician assistant, licensed pursuant to chapter 148C, from staffing an authorized ambulance, rescue, or first response service if the physician assistant can document equivalency through education and additional skills training essential in the delivery of out-of-hospital emergency care. The equivalency shall be accepted when:

1. Documentation has been reviewed and approved at the local level by the medical director of the ambulance, rescue, or first response service in accordance with the rules of the board of physician assistant examiners developed after consultation with the department.

2. Authorization has been granted to that ambulance, rescue, or first response service by the department.

95 Acts, ch 41, §22
Section amended

147A.14 through 147A.19 Reserved.

SUBCHAPTER II

STATEWIDE TRAUMA CARE SYSTEM

147A.20 Short title.

This subchapter may be cited as the "Iowa Trauma Care System Development Act".

95 Acts, ch 40, §1
NEW section

147A.21 Definitions.

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

1. "Categorization" means a preliminary determination by the department that a hospital or emergency care facility is capable of providing trauma care in accordance with criteria adopted pursuant to chapter 17A for level I, II, III, and IV care capabilities.

2. "Department" means the Iowa department of public health.

3. "Director" means the director of public health.

4. "Emergency care facility" means a physician's office, clinic, or other health care center which provides emergency medical care in conjunction with other primary care services.

5. "Hospital" means a facility licensed under chapter 135B, or a comparable emergency care facility located and licensed in another state.

6. "Trauma" means a single or multisystem life-threatening or limb-threatening injury, or an injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

7. "Trauma care facility" means a hospital or emergency care facility which provides trauma care and has been verified by the department as having level I, II, III, or IV care capabilities and issued a certificate of verification pursuant to section 147A.23, subsection 2, paragraph "c".

8. "Trauma care system" means an organized approach to providing personnel, facilities, and equipment for effective and coordinated trauma care.

9. "Verification" means a formal process by which the department certifies a hospital or emergency care facility's capacity to provide trauma care in accordance with criteria established for level I, II, III, and IV trauma care facilities.

95 Acts, ch 40, §2
NEW section

147A.22 Legislative findings and intent — purpose.

The general assembly finds the following:

1. Trauma is a serious health problem in the state of Iowa and is the leading cause of death of younger Iowans. The death and disability associated with traumatic injury contributes to the significant medical expenses and lost work, and adversely affects the productivity of Iowans.

2. Optimal trauma care is limited in many parts of the state. With health care delivery in transition, access to quality trauma and emergency medical care continues to challenge our rural communities.

3. The goal of a statewide trauma care system is to coordinate the medical needs of the injured person with an integrated system of optimal and cost-effective trauma care. The result of a well-coordinated statewide trauma care system is to reduce the incidences of inadequate trauma care and preventable deaths, minimize human suffering, and decrease the costs associated with preventable mortality and morbidity.

4. The development of the Iowa trauma care system will achieve these goals while meeting the unique needs of the rural residents of the state.

95 Acts, ch 40, §3
NEW section

147A.23 Trauma care system development.

1. The department is designated as a lead agency in this state responsible for the development of a statewide trauma care system.

2. The department, in consultation with the trauma system advisory council, shall develop, coordinate, and monitor a statewide trauma care system. This system shall include, but not be limited to, the following:

a. The categorization of all hospitals and emergency care facilities by the department as to their capacity to provide trauma care services. The cat-

egorization shall be determined by the department from self-reported information provided to the department by the hospital or emergency care facility. This categorization shall not be construed to imply any guarantee on the part of the department as to the level of trauma care services available at the hospital or emergency care facility.

b. The issuance of a certificate of verification of all categorized hospitals and emergency care facilities from the department at the level preferred by the hospital or emergency care facility. The standards and verification process shall be established by rule and may vary as appropriate by level of trauma care capability. To the extent possible, the standards and verification process shall be coordinated with other applicable accreditation and licensing standards.

c. Upon verification and the issuance of a certificate of verification, a hospital or emergency care facility agrees to maintain a level of commitment and resources sufficient to meet responsibilities and standards as required by the trauma care criteria established by rule under this subchapter. Verifications are valid for a period of three years or as determined by the department and are renewable. As part of the verification and renewal process, the department may conduct periodic on-site reviews of the services and facilities of the hospital or emergency care facility.

d. The department is responsible for the funding of the administrative costs of this subchapter. Any funds received by the department for this purpose shall be deposited in the emergency medical services fund established in section 135.25.

e. This section shall not be construed to limit the number and distribution of level I, II, III, and IV categorized and verified trauma care facilities in a community or region.

95 Acts, ch 40, §4
NEW section

147A.24 Trauma system advisory council established.

1. A trauma system advisory council is established. The following organizations or officials may recommend a representative to the council:

- a. American academy of pediatrics.
- b. American college of emergency physicians, Iowa chapter.
- c. American college of surgeons, Iowa chapter.
- d. Department of public health.
- e. Governor's traffic safety bureau.
- f. Iowa academy of family physicians.
- g. Iowa emergency medical services association.
- h. Iowa emergency nurses association.
- i. Iowa hospital association representing rural hospitals.
- j. Iowa hospital association representing urban hospitals.
- k. Iowa medical society.
- l. Iowa osteopathic medical society.
- m. Iowa physician assistant society.
- n. Iowa society of anesthesiologists.

o. Orthopedic system advisory council of the American academy of orthopedic surgeons, Iowa representative.

p. Rehabilitation services delivery representative.

q. State emergency medical services medical director.

r. State medical examiner.

s. Trauma nurse coordinator representing a trauma registry hospital.

t. University of Iowa, injury prevention research center.

2. The council shall be appointed by the director from the recommendations of the organizations in subsection 1 for terms of two years. Vacancies on the council shall be filled for the remainder of the term of the original appointment. Members whose terms expire may be reappointed.

3. The voting members of the council shall elect a chairperson and a vice chairperson and other officers as the council deems necessary. The officers shall serve until their successors are elected and qualified.

4. The council shall do all of the following:

a. Advise the department on issues and strategies to achieve optimal trauma care delivery throughout the state.

b. Assist the department in the implementation of an Iowa trauma care plan.

c. Develop criteria for the categorization of all hospitals and emergency care facilities according to their trauma care capabilities. These categories shall be for levels I, II, III, and IV, based on the most current guidelines published by the American college of surgeons committee on trauma, the American college of emergency physicians, and the model trauma care plan of the United States department of health and human services' health resources and services administration.

d. Develop a process for the verification of the trauma care capacity of each facility and the issuance of a certificate of verification.

e. Develop standards for medical direction, trauma care, triage and transfer protocols, and trauma registries.

f. Promote public information and education activities for injury prevention.

g. Review the rules adopted under this subchapter and make recommendations to the director for changes to further promote optimal trauma care.

95 Acts, ch 40, §5
NEW section

147A.25 System evaluation and quality improvement committee.

1. The department shall create a system evaluation and quality improvement committee to develop, implement, and conduct trauma care system evaluation, quality assessment, and quality improvement. The director shall appoint the members of the committee which shall include the following:

a. Two trauma surgeons.

b. One neurologic surgeon and one orthopedic surgeon.

c. Two emergency physicians.

d. Two trauma nurse coordinators.

e. Two emergency nurses.

f. Two out-of-hospital emergency medical care providers.

g. Department of public health trauma coordinator.

h. Iowa foundation of medical care director.

i. State emergency medical services medical director.

j. Two anesthesiologists.

k. Two family physicians.

l. Two physician assistants.

2. Proceedings, records, and reports developed pursuant to this section constitute peer review records under section 147.135, and are not subject to discovery by subpoena or admissible as evidence. All information and documents received from a hospital or emergency care facility under this subchapter shall be confidential pursuant to section 272C.6, subsection 4.

95 Acts, ch 40, §6
NEW section

147A.26 Trauma registry.

1. The department shall maintain a statewide trauma reporting system by which the system evaluation and quality improvement committee, the trauma system advisory council, and the department may monitor the effectiveness of the statewide trauma care system.

2. The data collected by and furnished to the department pursuant to this section shall not be public records under chapter 22. The compilations prepared for release or dissemination from the data collected shall be public records under chapter 22, which are not subject to section 22.7, subsection 2. However, the confidentiality of patients is to be protected and the laws of this state apply with regard to patient confidentiality.

3. To the extent possible, activities under this section shall be coordinated with other health data collection methods.

95 Acts, ch 40, §7
NEW section

147A.27 Department to adopt rules.

The department shall adopt rules, pursuant to chapter 17A, to implement the Iowa trauma care system plan, which specify all of the following:

1. Standards for trauma care.

2. Triage and transfer protocols.

3. Trauma registry procedures and policies.

4. Trauma care education and training requirements.

5. Hospital and emergency care facility categorization criteria.

6. Procedures for approval, denial, probation, and revocation of certificates of verification.

95 Acts, ch 40, §8
NEW section

147A.28 Prohibited acts.

A hospital or emergency care facility that imparts or conveys, or causes to be imparted or conveyed, that it is a trauma care facility, or that uses any other term to indicate or imply that the hospital or emergency care facility is a trauma care facility without having obtained a certificate of verification under this subchapter is subject to a civil penalty not to exceed one hundred dollars per day for each offense. In addition,

the director may apply to the district court for a writ of injunction to restrain the use of the term "*trauma care facility*". However, nothing in this subchapter shall be construed to restrict a hospital or emergency facility from providing any services for which it is duly authorized.

95 Acts, ch 40, §9; 95 Acts, ch 209, §21
NEW section
Section amended

CHAPTER 148A**PHYSICAL THERAPY****148A.1 Definition — referral — authorization.**

As used in this chapter, physical therapy is that branch of science that deals with the evaluation and treatment of human capabilities and impairments. Physical therapy uses the effective properties of physical agents including, but not limited to, mechanical devices, heat, cold, air, light, water, electricity, and sound, and therapeutic exercises, and rehabilitative procedures to prevent, correct, minimize, or alleviate a physical impairment. Physical therapy includes the interpretation of performances, tests, and measurements, the establishment and modification of physical therapy programs, treatment plan-

ning, consultative services, instructions to the patients, and the administration and supervision attendant to physical therapy facilities. Physical therapy evaluation and treatment may be rendered by a physical therapist with or without a referral from a physician, podiatric physician, dentist, or chiropractor, except that a hospital may require that physical therapy evaluation and treatment provided in the hospital shall be done only upon prior review by and authorization of a member of the hospital's medical staff.

95 Acts, ch 108, §8
Section amended

CHAPTER 149**PODIATRY****149.1 Persons engaged in practice — definitions.**

1. For the purpose of this subtitle the following classes of persons shall be deemed to be engaged in the practice of podiatry:

a. Persons who publicly profess to be podiatric physicians or who publicly profess to assume the duties incident to the practice of podiatry.

b. Persons who diagnose, prescribe, or prescribe and furnish medicine for ailments of the human foot, or treat such ailments by medical, mechanical, or surgical treatments.

2. As used in this chapter, "*human foot*" means the ankle and soft tissue which insert into the foot as well as the foot.

3. "*Podiatric physician*" means a physician or surgeon licensed under this chapter to engage in the practice of podiatric medicine and surgery.

95 Acts, ch 108, §9
Subsection 1 amended
NEW subsection 3

149.5 Amputations — general anesthetics.

A license to practice podiatry shall not authorize the licensee to amputate the human foot or use any anesthetics other than local.

A licensed podiatric physician may prescribe and administer drugs for the treatment of human foot ailments as provided in section 149.1.

95 Acts, ch 108, §10
Unnumbered paragraph 2 amended

149.6 Title or abbreviation.

Every licensee shall be designated as a licensed podiatric physician and shall not use any title or abbreviation without the designation "practice limited to the foot," nor mislead the public in any way as to the limited field or practice.

95 Acts, ch 108, §11
Section amended

CHAPTER 152

NURSING

152.1 Definitions.

As used in this chapter:

1. "Board" means the board of nursing, created under chapter 147.

2. As used in this section, "nursing diagnosis" means to identify and use discriminatory judgment concerning physical and psychosocial signs and symptoms essential to determining effective nursing intervention.

3. "Physician" means a person licensed in this state to practice medicine and surgery, osteopathy and surgery, or osteopathy, or a person licensed in this state to practice dentistry or podiatry when acting within the scope of the license. A physician licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy in a state bordering this state shall be considered a physician for purposes of this chapter unless previously determined to be ineligible for such consideration by the Iowa board of medical examiners.

4. The "practice of a licensed practical nurse" means the practice of a natural person who is licensed by the board to do all of the following:

a. Perform services in the provision of supportive or restorative care under the supervision of a registered nurse or a physician.

b. Perform additional acts under emergency or other conditions which require education and training and which are recognized by the medical and nursing professions and are approved by the board, as being proper to be performed by a licensed practical nurse.

5. The "practice of nursing" means the practice of a registered nurse or a licensed practical nurse. It does not mean any of the following:

a. The practice of medicine and surgery, as defined in chapter 148, the osteopathic practice, as defined in chapter 150, the practice of osteopathic medicine and surgery, as defined in chapter 150A, or the practice of pharmacy as defined in chapter 155A, except practices which are recognized by the medical and nursing professions and approved by the board as proper to be performed by a registered nurse.

b. The performance of nursing services by a student enrolled in an approved program of nursing if the performance is incidental to a course of study under this program.

c. The performance of services by employed workers in offices, hospitals, or health care facilities, as defined in section 135C.1, under the supervision of a physician or a nurse licensed under this chapter, or employed in the office of a psychologist, podiatric physician, optometrist, chiropractor, speech pathologist, audiologist, or physical therapist licensed to practice in this state, and when acting while within the scope of the employer's license.

d. The practice of a nurse licensed in another state and employed in this state by the federal government if the practice is in discharge of official employment duties.

e. The care of the sick rendered in connection with the practice of the religious tenets of any church or order by the adherents thereof which is not performed for hire, or if performed for hire by those who depend upon prayer or spiritual means for healing in the practice of the religion of their church or denomination, so long as they do not otherwise engage in the practice of nursing as practical nurses.

6. The "practice of the profession of a registered nurse" means the practice of a natural person who is licensed by the board to do all of the following:

a. Formulate nursing diagnosis and conduct nursing treatment of human responses to actual or potential health problems through services, such as case finding, referral, health teaching, health counseling, and care provision which is supportive to or restorative of life and well-being.

b. Execute regimen prescribed by a physician.

c. Supervise and teach other personnel in the performance of activities relating to nursing care.

d. Perform additional acts or nursing specialties which require education and training under emergency or other conditions which are recognized by the medical and nursing professions and are approved by the board as being proper to be performed by a registered nurse.

e. Apply to the abilities enumerated in paragraph "a" through "d" of this subsection scientific principles, including the principles of nursing skills and of biological, physical, and psychosocial sciences.

95 Acts, ch 108, §12

Subsection 5, paragraph c amended

152.5 Education programs.

1. All programs preparing a person to be a registered nurse or a licensed practical nurse shall be approved by the board. The board shall not recognize a program unless it:

a. Is of recognized standing.

b. Has provisions for adequate physical and clinical facilities and other resources with which to conduct a sound education program.

c. Requires, for graduation of a registered nurse applicant, the completion of at least a two academic year course of study.

d. Requires, for graduation of a licensed practical nurse applicant, the completion of at least a one academic year course of study as prescribed by the board.

2. All advanced formal academic nursing education programs shall also be approved by the board.

95 Acts, ch 79, §1

Subsection 1, paragraphs c and d amended

152.7 Applicant qualifications.

In addition to the provisions of section 147.3, an applicant to be licensed for the practice of nursing shall have the following qualifications:

1. Be a graduate of an accredited high school or the equivalent.
2. Pass an examination as prescribed by the board.
3. Complete a course of study approved by the board pursuant to section 152.5.

Notwithstanding section 152.5, a person enrolled in an academic course of study for registered nurses

on June 30, 1995, shall be allowed to apply for a license as a practical nurse which shall be issued after demonstrating completion of the equivalent of a one academic year course of study in theory and practice as prescribed by the board. Applicants obtaining licenses under this paragraph may be required to complete additional continuing education requirements as prescribed by the board.

95 Acts, ch 79, §2
Subsection 3 amended and subsection 4 stricken

CHAPTER 152B**RESPIRATORY CARE****152B.11 Continuing education.**

After July 1, 1991, a respiratory care practitioner shall submit evidence satisfactory to the department that during the year preceding renewal of licensure the practitioner has completed continuing education courses as prescribed by the department. In lieu of the continuing education, a person may successfully complete the most current version of the licensure examination.

Persons who are not licensed under this chapter but who perform respiratory care as defined by sections 152B.2 and 152B.3 shall comply with the continuing education requirements of this section. The department shall adopt rules for the administration of this requirement.

This section does not apply to persons who are licensed to practice a health profession covered by chapter 147 or to any person who performs respiratory care procedures as a first responder, emergency rescue technician, emergency medical care provider, or other person functioning as part of a rescue unit or in a hospital as authorized by chapter 147A, or to persons whose function with respect to respiratory care is limited to the home delivery and connection of oxygen tanks.

95 Acts, ch 41, §23
Unnumbered paragraph 3 amended

CHAPTER 152D**ATHLETIC TRAINING****152D.3 Qualifications — procedures.**

1. An applicant for an athletic trainer license must possess the following qualifications:

a. Graduation from an accredited college or university and compliance with the minimum athletic training curriculum requirements established by the department in consultation with the board.

b. Successful completion of an examination prepared or selected by the department in consultation with the board.

2. An out-of-state applicant for an athletic trainer license must fulfill the requirements of subsection 1, paragraphs "a" and "b", and submit proof of active engagement as an athletic trainer in the other state.

3. Application and renewal procedures, fees, and reciprocal agreements shall be provided in accordance with this chapter.

95 Acts, ch 94, §2
Subsection 2 amended

CHAPTER 153

DENTISTRY

153.14 Persons not included.

Section 153.13 shall not be construed to include the following classes:

1. Students of dentistry who practice dentistry upon patients at clinics in connection with their regular course of instruction at the state dental college and students of dental hygiene who practice upon patients at clinics in connection with their regular course of instruction at state-approved schools.
2. Licensed "physicians and surgeons" or licensed "osteopaths and surgeons" who extract teeth or treat

diseases of the oral cavity, gums, teeth, or maxillary bones as an incident to the general practice of their profession.

3. Persons licensed to practice dental hygiene who are exclusively engaged in the practice of said profession.

4. Dentists and dental hygienists who are licensed in another state and who are active or reserve members of the United States military service when acting in the line of duty in this state.

95 Acts, ch 16, §1
NEW subsection 4

CHAPTER 155A

PHARMACY

155A.3 Definitions.

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

1. "*Administer*" means the direct application of a prescription drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by one of the following:

a. A practitioner or the practitioner's authorized agent.

b. The patient or research subject at the direction of a practitioner.

2. "*Authorized agent*" means an individual designated by a practitioner who is under the supervision of the practitioner and for whom the practitioner assumes legal responsibility.

3. "*Board*" means the board of pharmacy examiners.

4. "*Brand name*" or "*trade name*" means the registered trademark name given to a drug product or ingredient by its manufacturer, labeler, or distributor.

5. "*College of pharmacy*" means a school, university, or college of pharmacy that satisfies the accreditation standards of the American council on pharmaceutical education as adopted by the board, or that has degree requirements which meet the standards of accreditation adopted by the board.

6. "*Controlled substance*" means a drug substance, immediate precursor, or other substance listed in division II of chapter 124.

7. "*Controlled substances Act*" means chapter 124.

8. "*Deliver*" or "*delivery*" means the actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

9. "*Demonstrated bioavailability*" means the rate and extent of absorption of a drug or drug ingredient from a specified dosage form, as reflected by the

time-concentration curve of the drug or drug ingredient in the systemic circulation.

10. "*Device*" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

11. "*Dispense*" means to deliver a prescription drug or controlled substance to an ultimate user or research subject by or pursuant to the lawful prescription drug order or medication order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

12. "*Distribute*" means the delivery of a prescription drug or device.

13. "*Drug*" means one or more of the following:

a. A substance recognized as a drug in the current official United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia, or other drug compendium or any supplement to any of them.

b. A substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals.

c. A substance, other than food, intended to affect the structure or any function of the body of humans or other animals.

d. A substance intended for use as a component of any substance specified in paragraph "a", "b", or "c".

e. A controlled substance.

14. "*Drug product selection*" means the act of selecting the source of supply of a drug product.

15. "*Drug sample*" means a drug that is distributed without consideration to a pharmacist or practitioner.

16. "*Generic name*" means the official title of a drug or drug ingredient published in the current official United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia, or other drug compendium published by the United States pharmacopoeial convention or any supplement to any of them.

17. "*Internship*" means a practical experience program approved by the board for persons training to become pharmacists.

18. "*Label*" means written, printed, or graphic matter on the immediate container of a drug or device.

19. "*Labeling*" means the process of preparing and affixing a label including information required by federal or state law or regulation to a drug or device container. The term does not include the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged prescription drug or device or unit dose packaging.

20. "*Medication order*" means a written order from a practitioner or an oral order from a practitioner or the practitioner's authorized agent for administration of a drug or device.

21. "*Pharmacist*" means a person licensed by the board to practice pharmacy.

22. "*Pharmacist in charge*" means the pharmacist designated on a pharmacy license as the pharmacist who has the authority and responsibility for the pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

23. "*Pharmacist-intern*" means an undergraduate student enrolled in the professional sequence of a college of pharmacy approved by the board, or a graduate of a college of pharmacy, who is participating in a board-approved internship under the supervision of a preceptor.

24. "*Pharmacy*" means a location where prescription drugs are compounded, dispensed, or sold by a pharmacist and where prescription drug orders are received or processed in accordance with the pharmacy laws.

25. "*Pharmacy license*" means a license issued to a pharmacy or other place where prescription drugs or devices are dispensed to the general public pursuant to a prescription drug order.

26. "*Practice of pharmacy*" is a dynamic patient-oriented health service profession that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and related drug therapy.

27. "*Practitioner*" means a physician, dentist, podiatric physician, veterinarian, or other person licensed or registered to distribute or dispense a prescription drug or device in the course of professional practice in this state or a person licensed by another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs.

28. "*Preceptor*" means a pharmacist in good standing licensed in this state to practice pharmacy and approved by the board to supervise and be re-

sponsible for the activities and functions of a pharmacist-intern in the internship program.

29. "*Prescription drug*" means any of the following:

a. A substance for which federal or state law requires a prescription before it may be legally dispensed to the public.

b. A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(1) Caution: Federal law prohibits dispensing without a prescription.

(2) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian.

c. A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only, or is restricted to use by a practitioner only.

30. "*Prescription drug order*" means a written order from a practitioner or an oral order from a practitioner or the practitioner's authorized agent who communicates the practitioner's instructions, to a pharmacist for a prescription drug or device to be dispensed.

31. "*Proprietary medicine*" means a nonnarcotic drug or device that may be sold without a prescription and that is labeled and packaged in compliance with applicable state or federal law.

32. "*Ultimate user*" means a person who has lawfully obtained and possesses a prescription drug or device for the person's own use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household.

33. "*Unit dose packaging*" means the packaging of individual doses of a drug in containers which preserve the identity and integrity of the drug from the point of packaging to administration and which are properly labeled pursuant to rules of the board.

34. "*Wholesaler*" means a person operating or maintaining, either within or outside this state, a manufacturing plant, wholesale distribution center, wholesale business, or any other business in which prescription drugs, medicinal chemicals, medicines, or poisons are sold, manufactured, compounded, dispensed, stocked, exposed, or offered for sale at wholesale in this state. "*Wholesaler*" does not include those wholesalers who sell only proprietary medicines.

35. "*Wholesale salesperson*" or "*manufacturer's representative*" means an individual who takes purchase orders on behalf of a wholesaler for prescription drugs, medicinal chemicals, medicines, or poisons. "*Wholesale salesperson*" or "*manufacturer's representative*" does not include an individual who sells only proprietary medicines.

95 Acts, ch 108, §13
Subsection 27 amended

155A.21 Unlawful possession of prescription drug — penalty.

1. A person found in possession of a drug limited to dispensation by prescription, unless the drug was

so lawfully dispensed, commits a serious misdemeanor.

2. Subsection 1 does not apply to a licensed pharmacy, licensed wholesaler, physician, veterinarian, dentist, podiatric physician, therapeutically certified optometrist, a nurse acting under the direction of a physician, or the board of pharmacy examiners, its officers, agents, inspectors, and representatives, nor to a common carrier, manufacturer's representative, or messenger when transporting the drug in the same unbroken package in which the drug was delivered to that person for transportation.

95 Acts, ch 108, §14
Subsection 2 amended

155A.23 Prohibited acts.

A person shall not:

1. Obtain or attempt to obtain a prescription drug or procure or attempt to procure the administration of a prescription drug by:

a. Fraud, deceit, misrepresentation, or subterfuge.

b. Forgery or alteration of a prescription or of any written order.

c. Concealment of a material fact.

d. Use of a false name or the giving of a false address.

2. Willfully make a false statement in any prescription, report, or record required by this chapter.

3. For the purpose of obtaining a prescription drug, falsely assume the title of or claim to be a manufacturer, wholesaler, pharmacist, pharmacy owner, physician, dentist, podiatric physician, veterinarian, or other authorized person.

4. Make or utter any false or forged prescription or written order.

5. Affix any false or forged label to a package or receptacle containing prescription drugs.

Information communicated to a physician in an unlawful effort to procure a prescription drug or to procure the administration of a prescription drug shall not be deemed a privileged communication.

95 Acts, ch 108, §15
Subsection 3 amended

CHAPTER 159

DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

159.8 Comprehensive management plan — highly erodible acres.

The department shall request cooperation from the federal government, including the United States department of agriculture consolidated farm service agency and the United States department of agriculture natural resources conservation service, to investigate methods to preserve land which is highly erodible, as provided in the federal Food Security Act of 1985, 16 U.S.C. § 3801 et seq., for the purpose of developing with owners of the land a comprehensive management plan for the land. The plan may be based on the soil conservation plan of the natural resources conservation service and may include a farm unit conservation plan and a comprehensive agreement as provided in chapter 161A. The extension services at Iowa state university of science and technology shall cooperate with the department in developing the comprehensive plan.

The investigation shall include methods which help to preserve highly erodible land from row crop production through production of alternative commodities, and financial incentives. The department shall report to the governor and the general assembly not later than January 15, 1990, of the department's progress in the investigation. The department shall report to the governor and the general assembly not later than January 15, 1991, on the department's

recommendation for programs necessary to preserve highly erodible land from injury or destruction.

95 Acts, ch 216, §25
Unnumbered paragraph 1, references to federal agencies updated

MANURE DISPOSAL

159.27 Disposal of manure within designated areas — adoption of rules.

The department shall adopt rules relating to the disposal of manure in close proximity to a designated area. A person shall not dispose of manure on cropland within two hundred feet from a designated area, unless one of the following applies:

1. The manure is applied by injection or incorporation within twenty-four hours following the application.

2. An area of permanent vegetation cover exists for fifty feet surrounding the designated area and that area is not subject to manure application.

As used in this section, "designated area" means a known sinkhole, or a cistern, abandoned well, unplugged agricultural drainage well, agricultural drainage well surface inlet, drinking water well, or lake, or a farm pond or privately owned lake as defined in section 462A.2. However, a "designated area" does not include a terrace tile inlet.

95 Acts, ch 195, §3
NEW section

CHAPTER 161A

SOIL AND WATER CONSERVATION

161A.3 Definitions.

Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

1. "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

2. "Commissioner" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this chapter.

3. "Committee" or "state soil conservation committee" means the committee established by section 161A.4.

4. "Department" means the department of agriculture and land stewardship.

5. "District" or "soil and water conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized for the purposes, with the powers, and subject to the restrictions in this chapter set forth.

6. "Division" means the division of soil conservation created within the department.

7. "Due notice" means notice published at least twice, with an interval of at least six days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area; or, if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

8. "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, or either of them.

9. "Landowner" includes any person, firm, or corporation or any federal agency, this state or any of its political subdivisions, who shall hold title to land lying within a proposed district or a district organized under the provisions of this chapter.

10. "Nominating petition" means a petition filed under the provisions of section 161A.5 to nominate candidates for the office of commissioner of a soil and water conservation district.

11. "Petition" means a petition filed under the provisions of subsection 1 of section 161A.5 for the creation of a district.

12. "State" means the state of Iowa.

13. "United States" or "agencies of the United States" includes the United States of America, the United States department of agriculture natural re-

sources conservation service, and any other agency or instrumentality, corporate or otherwise, of the United States.

95 Acts, ch 216, §25

Subsection 13, reference to federal agency updated

161A.7 Powers of districts and commissioners.

A soil and water conservation district organized under this chapter has the following powers, in addition to others granted in other sections of this chapter:

1. To conduct surveys, investigations, and research relating to the character of soil erosion and erosion, floodwater, and sediment damages, and the preventive and control measures needed, to publish the results of such surveys, investigations or research, and to disseminate information concerning such preventive and control measures; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the Iowa agricultural experiment station located at Ames, Iowa, and pursuant to a cooperative agreement entered into between the Iowa agricultural experiment station and such district.

2. To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled; provided, however, that in order to avoid duplication of agricultural extension activities, no district shall initiate any demonstrational projects, except in cooperation with the Iowa agricultural extension service whose offices are located at Ames, Iowa, and pursuant to a cooperative agreement entered into between the Iowa agricultural extension service and such district.

3. To carry out preventive and control measures within the district, including, but not limited to, crop rotations, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in section 161A.2, on lands owned or controlled by this state or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district, upon obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands. Any approval or permits from the council required under other provisions of law shall be ob-

tained by the district prior to initiation of any construction activity.

4. To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any owner or occupier of lands within the district, in the carrying on of erosion-control and watershed protection and flood prevention operations within the district, subject to such conditions as the commissioners may deem necessary to advance the purposes of this chapter.

5. To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter.

6. To make available on such terms as it shall prescribe, to landowners or occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, lime, and such other material or equipment as will assist such landowners or occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for the prevention of erosion, floodwater, and sediment damages.

7. To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter. Any approval or permits from the council required under other provisions of law shall be obtained by the district prior to initiation of any construction activity.

8. To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for the prevention of erosion, floodwater, and sediment damages within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish such plans and information and bring them to the attention of owners and occupiers of lands within the district.

9. To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules not inconsistent with this chapter, to carry into effect its purposes and powers.

10. To accept donations, gifts, and contributions in money, services, materials, or otherwise, from the

United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations.

11. As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the commissioners may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require landowners or occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

12. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

13. After the formation of any district under the provisions of this chapter, all participation hereunder shall be purely voluntary, except as specifically stated herein.

14. Subject to the approval of the state soil conservation committee, to change the name of the soil and water conservation district.

15. Reserved.

16. The commissioners shall, as a condition for the receipt of any state cost-sharing funds for permanent soil conservation practices, require the owner of the land on which the practices are to be established to covenant and file, in the office of the soil and water conservation district of the county in which the land is located, an agreement identifying the particular lands upon which the practices for which state cost-sharing funds are to be received will be established, and providing that the project will not be removed, altered, or modified so as to lessen its effectiveness without the consent of the commissioners, obtained in advance and based on guidelines drawn up by the state soil conservation committee, for a period of twenty years after the date of receiving payment. The commissioners shall assist the division in the enforcement of this subsection. The agreement does not create a lien on the land, but is a charge personally against the owner of the land at the time of removal, alteration, or modification if an administrative order is made under section 161A.61, subsection 3.

17. To encourage local school districts to provide instruction in the importance of and in some of the basic methods of soil conservation, as a part of course work relating to conservation of natural resources and environmental awareness required in rules adopted by the state board of education pursuant to section 256.11, subsections 3 and 4, and to offer technical assistance to schools in developing such instructional programs.

18. To develop a soil and water resource conservation plan for the district.

a. The district plan shall contain a comprehensive long-range assessment of soil and surface water

resources in the district consistent with rules approved by the committee under section 161A.4. In developing the plan the district may receive technical support from the United States department of agriculture natural resources conservation service and the county board of supervisors in the county where the district is located. The division and the Iowa cooperative extension service in agriculture and home economics may provide technical support to the district. The support may include, but is not limited to, the following: assessing the condition of soil and surface water in the district, including an evaluation of the type, amount, and quality of soil and water, the threat of soil erosion and erosion, floodwater, and sediment damages, and necessary preventative and control measures; developing methods to maintain or improve soil and water condition; and cooperating with other state and federal agencies to carry out this support.

b. The title page of the district plan and a notification stating where the plan may be reviewed shall be recorded with the recorder in the county in which the district is located, and updated as necessary, after the committee approves and the administrator of the division signs the district plan. The commissioners shall provide notice of the recording and may provide a copy of the approved district plan to the county board of supervisors in the county where the district is located. The district plan shall be filed with the division as part of the state soil and water resource conservation plan provided in section 161A.4.

19. To enter into agreements pursuant to chapter 161C with the owner or occupier of land within the district or cooperating districts, or any other private entity or public agency, in carrying out water protection practices, including district and multidistrict projects to protect this state's groundwater and surface water from point and nonpoint sources of contamination, including but not limited to agricultural drainage wells, sinkholes, sedimentation, and chemical pollutants.

95 Acts, ch 216, §25

Subsection 18, paragraph a, reference to federal agency updated

161A.62 Duties of commissioners and of owners and occupants of agricultural land — restrictions on use of cost-sharing funds.

The commissioners of each soil and water conservation district shall seek to implement or to assist in implementing the following requirements:

1. Each farm unit shall be furnished a conservation folder complying with the rules of the department by the soil and water conservation district in which the farm unit is located, not later than January 1, 1985, or as soon thereafter as adequate funding is available to permit completion of a conservation folder for every farm unit in the state. Technical assistance in the development of the conservation folder may be provided by the United States department of agriculture natural resources conservation

service through the memorandum of understanding with the district or by the department. The department shall provide by rule that an updated farm plan prepared for a particular farm unit within ten years prior to the effective date of this subsection shall be considered an adequate replacement for the conservation folder for that farm unit. Upon completion of the conservation folder for a particular farm unit, the district shall send the owner of that farm unit, and also the operator of the farm unit if known by the commissioners to be other than the owner, a letter offering that person or those persons a copy of the folder. The district shall keep a record of the date the folder is completed and the letter is sent. The folder shall be updated from time to time by the district as it deems necessary.

2. The commissioners of each soil and water conservation district shall complete preparation of a farm unit soil conservation plan for each farm unit within the district, not later than January 1, 1985, or five years after completion of the conservation folder for that farm unit, whichever date is later, or as soon thereafter as adequate funding is available to permit compliance with this requirement. Technical assistance in the development of the farm unit soil conservation plan may be provided by the United States department of agriculture natural resources conservation service through the memorandum of understanding with the district or by the department. The commissioners shall make every reasonable effort to consult with the owner and, if appropriate, with the operator of that farm unit, and to prepare the plan in a form which is acceptable to that person or those persons. The plan shall be drawn up and completed without expense to the owner or operator of the farm unit, except that the owner or operator shall not be reimbursed for the value of the owner's or occupant's own time devoted to participation in the preparation of the plan. If the commissioners' plan is unacceptable to the owner or operator of the farm unit, that person or those persons may prepare an alternative farm unit soil conservation plan identifying permanent or temporary soil and water conservation practices which may be expected to achieve compliance with the soil loss limit or limits applicable to that farm unit, and submit that plan to the soil and water conservation district commissioners for their review.

3. Within one year after completion of a farm unit soil conservation plan for a particular farm unit which is acceptable both to the commissioners of the soil and water conservation district within which the farm unit is located and to the owner and, if appropriate, to the operator of that farm unit, the commissioners shall offer to enter into a soil conservation agreement with the owner, and also with the operator if appropriate, based on the mutually acceptable farm unit soil conservation plan.

95 Acts, ch 216, §25

Subsections 1 and 2, references to federal agency updated

CHAPTER 161C

WATER PROTECTION PROJECTS AND PRACTICES

161C.1 Definitions.

As used or referred to in this chapter, unless a different meaning clearly appears from the context:

1. "Committee" or "state soil conservation committee" means the committee established by section 161A.4.

2. "Department" means the department of agriculture and land stewardship.

3. "District" means a soil and water conservation district established in chapter 161A.

4. "Division" means the division of soil conservation created within the department.

5. "Landowner" includes any person, including a federal agency, this state or any of its political subdivisions, who holds title to land lying within a proposed district.

6. "United States" or "agencies of the United States" includes the United States of America, the United States department of agriculture natural resources conservation service, and any other agency or instrumentality, corporate or otherwise, of the United States.

95 Acts, ch 216, §25

Subsection 6, reference to federal agency updated

161C.4 Water protection fund.

A water protection fund is created within the division. The fund is composed of money appropriated by the general assembly for that purpose, and moneys available to and obtained or accepted by the state soil conservation committee from the United States or private sources for placement in the fund. The fund shall be divided into two accounts, the water quality

protection projects account and the water protection practices account. The first account shall be used to carry out water quality protection projects to protect the state's surface and groundwater from point and nonpoint sources of contamination. The second account shall be used to establish water protection practices with individual landowners including but not limited to woodland establishment and protection, establishment of native grasses and forbs, sink-hole management, agricultural drainage well management, streambank stabilization, grass waterway establishment, stream buffer strip establishment, and erosion control structure construction. Twenty-five percent of funds appropriated to the water protection practices account shall be used for woodland establishment and protection, and establishment of native grasses and forbs. Soil and water conservation district commissioners shall give priority to applications for practices that implement their soil and water resource conservation plan. The fund shall be a revolving fund from which moneys may be used for loans, grants, administrative costs, and cost-sharing.

In administering the fund the division may:

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

2. Authorize payment from the water protection fund and from fees for costs, commissions, and other reasonable expenses.

95 Acts, ch 216, §36

Unnumbered paragraph 1 amended

CHAPTER 161D

LOESS HILLS DEVELOPMENT AND CONSERVATION AUTHORITY

161D.1 Loess hills development and conservation authority created — membership and duties.

1. A loess hills development and conservation authority is created. The counties of Lyon, Sioux, Plymouth, Cherokee, Woodbury, Ida, Sac, Monona, Crawford, Carroll, Harrison, Shelby, Audubon, Pottawattamie, Cass, Adair, Mills, Montgomery, Adams, Fremont, Page, and Taylor are entitled to one voting member each on the authority, but membership or participation in projects of the authority is not required. Each member of the authority shall be appointed by the respective board of supervisors for a term to be determined by each board of supervisors, but the term shall not be for less than one year. An appointee shall serve without compensation, but an appointee may be reimbursed for actual expenses

incurred while performing the duties of the authority as determined by each board of supervisors. The authority shall meet, organize, and adopt rules of procedures as deemed necessary to carry out its duties. The authority may appoint working committees that include other individuals in addition to voting members.

2. The mission of the authority is to develop and coordinate plans for projects related to the unique natural resource, rural development, and infrastructure problems of counties in the deep loess region of western Iowa. The erosion and degradation of stream channels in the deep loess soils has occurred due to historic channelization of the Missouri river and straightening stream channels of its tributaries. This erosion of land has damaged the rural infrastructure of this area, destroyed public roads and bridges,

adversely impacted stream water quality and riparian habitat, and affected other public and private improvements. Stabilization of stream channels is necessary to protect the rural infrastructure in the deep loess soils area of the state. The authority shall cooperate with the division of soil conservation of the department of agriculture and land stewardship, the affected soil and water conservation districts, the department of natural resources, and the state department of transportation in carrying out its mission and duties. The authority shall also cooperate with appropriate federal agencies, including the United States environmental protection agency, the United States department of interior, and the United States department of agriculture natural resources

conservation service. The authority shall make use of technical resources available through member counties and cooperating agencies.

3. The authority shall administer the loess hills development and conservation fund created under section 161D.2 and shall deposit and expend moneys in the fund for the planning, development, and implementation of development and conservation activities or measures in the member counties.

4. This section is not intended to affect the authority of the department of natural resources in its acquisition, development, and management of public lands within the counties represented by the authority.

95 Acts, ch 216, §25

Subsection 2, reference to federal agency updated

CHAPTER 162

CARE OF ANIMALS IN COMMERCIAL ESTABLISHMENTS

162.2 Definitions.

As used in this chapter, except as otherwise expressly provided:

1. "*Adequate feed*" means the provision at suitable intervals of not more than twenty-four hours or longer if the dietary requirements of the species so require, of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition in each animal. The foodstuff shall be served in a clean receptacle, dish or container.

2. "*Adequate water*" means reasonable access to a supply of clean, fresh, potable water provided in a sanitary manner or provided at suitable intervals for the species and not to exceed twenty-four hours at any interval.

3. "*Animal shelter*" means a facility which is used to house or contain dogs or cats, or both, and which is owned, operated, or maintained by an incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other non-profit organization devoted to the welfare, protection, and humane treatment of such animals.

4. "*Animal warden*" means any person employed, contracted, or appointed by the state, municipal corporation, or any political subdivision of the state, for the purpose of aiding in the enforcement of the provisions of this chapter or any other law or ordinance relating to the licensing of animals, control of animals or seizure and impoundment of animals and includes any peace officer, animal control officer, or other employee whose duties in whole or in part include assignments which involve the seizure or taking into custody of any animal.

5. "*Boarding kennel*" means a place or establishment other than a pound or animal shelter where dogs or cats not owned by the proprietor are sheltered, fed and watered in return for a consideration.

6. "*Commercial breeder*" means a person, engaged in the business of breeding dogs or cats, who

sells, exchanges, or leases dogs or cats in return for consideration, or who offers to do so, whether or not the animals are raised, trained, groomed, or boarded by the person. A person who owns or harbors three or less breeding males or females is not a commercial breeder. However, a person who breeds or harbors more than three breeding male or female greyhounds for the purposes of using them for pari-mutuel racing shall be considered a commercial breeder irrespective of whether the person sells, leases, or exchanges the greyhounds for consideration or offers to do so.

7. "*Commercial kennel*" means a kennel which performs grooming, boarding, or training services for dogs or cats in return for a consideration.

8. "*Dealer*" means any person who is engaged in the business of buying for resale or selling or exchanging dogs or cats, or both, as a principal or agent, or who claims to be so engaged.

9. "*Euthanasia*" means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent which causes painless loss of consciousness, and death during the loss of consciousness.

10. "*Housing facilities*" means any room, building or area used to contain a primary enclosure or enclosures.

11. "*Person*" means person as defined in chapter 4.

12. "*Pet shop*" means an establishment where a dog, cat, rabbit, rodent, nonhuman primate, fish other than live bait, bird, or other vertebrate animal is bought, sold, exchanged, or offered for sale. However, a pet shop does not include an establishment if one of the following applies:

a. The establishment receives less than five hundred dollars from the sale or exchange of vertebrate animals during a twelve-month period.

b. The establishment sells or exchanges less than six animals during a twelve-month period.

13. *"Pound" or "dog pound"* means a facility for the prevention of cruelty to animals operated by the state, a municipal corporation, or other political subdivision of the state for the purpose of impounding or harboring seized stray, homeless, abandoned or unwanted dogs, cats or other animals; or a facility operated for such a purpose under a contract with any municipal corporation or incorporated society.

14. *"Primary enclosure"* means any structure used to immediately restrict an animal to a limited amount of space, such as a room, pen, cage or compartment.

15. *"Public auction"* means any place or location where dogs or cats, or both, are sold at auction to the highest bidder regardless of whether the dogs or cats are offered as individuals, as a group, or by weight.

16. *"Research facility"* means any school or college of medicine, veterinary medicine, pharmacy, dentistry, or osteopathy, or hospital, diagnostic or research laboratories, or other educational or scientific establishment situated in this state concerned with the investigation of, or instruction concerning the structure or function of living organisms, the cause, prevention, control or cure of diseases or abnormal conditions of human beings or animals.

17. *"Vertebrate animal"* means those vertebrate animals other than members of the equine, bovine, ovine, and porcine species, and ostriches, rheas, or emus.

95 Acts, ch 43, §4
 Subsection 17 amended

CHAPTER 163

INFECTIOUS AND CONTAGIOUS DISEASES AMONG ANIMALS

163.47 Exemptions.

The provisions of this division shall not apply to

4-H or future farmers of America organizations engaged in breeding programs.

95 Acts, ch 67, §13
 Section amended

CHAPTER 166D

PSEUDORABIES CONTROL

166D.2 Definitions.

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

1. *"Advisory committee"* means the state pseudorabies advisory committee composed of swine producers and other representatives of the swine industry, appointed pursuant to section 166D.3.

2. *"Approved premises"* means a dry lot facility located in an area with confirmed cases of pseudorabies infection, which is authorized by the department to receive, hold, or feed infected swine, exposed animals, or swine of unknown status. The premises and all swine on the premises shall be considered under quarantine. However, swine may be moved to slaughter under a transportation certificate or may be moved to another pseudorabies approved premises under a certificate of inspection.

3. *"Approved premises permit"* means a permit issued by the department necessary for a person to own and operate an approved premises.

4. *"Area eradication activity"* means activities related to testing herds for purposes of evaluation and control of swine within a program area to achieve pseudorabies eradication within the area.

5. *"Board of directors"* means a county or multi-county pork producer organization designated by the Iowa pork producers association to represent an area proposed as a program area.

6. *"Breeding swine"* means swine over six months of age.

7. *"Certificate of inspection"* means a document approved by the United States department of agriculture or the department of agriculture and land stewardship, and issued by a licensed veterinarian prior to the interstate or intrastate movement of swine. The certificate of inspection must state all of the following:

a. The number, description, and identification of the swine to be moved.

b. Whether the swine to be moved are known to be infected with or exposed to pseudorabies.

c. The farm of origin.

d. The purpose for moving the swine.

e. The point of destination of the swine.

f. The consignor and each consignee of the swine.
 g. Additional information as required by state or federal law.

The department may combine an official health certificate or a veterinarian inspection certificate as required under chapter 163 with a certificate of inspection.

8. *"Concentration point"* means a location or facility where swine are assembled for purposes of sale or resale for feeding, breeding, or slaughtering, and where contact may occur between groups of swine from various sources. *"Concentration point"* includes

a public stockyard, auction market, street market, state or federal market, untested consignment sales location, buying station, or a livestock dealer's yard, truck, or facility.

9. "*Differentiable test*" means a laboratory procedure approved by the department to diagnose pseudorabies. The procedure must be capable of recognizing and distinguishing between vaccine-exposed and field-pseudorabies-virus-exposed swine.

10. "*Differentiable vaccinate*" means a swine which has only been exposed to a differentiable vaccine.

11. "*Differentiable vaccine*" means a vaccine which has a licensed companion differentiable test.

12. "*Direct movement*" means movement of swine to a destination without unloading the swine in route, without contact with swine of lesser pseudorabies vaccinate status, and without contact with infected or exposed livestock.

13. "*Epidemiologist*" means a state or federal veterinarian designated to investigate and diagnose suspected pseudorabies in livestock. The epidemiologist must have had special training in the diagnosis and epidemiology of pseudorabies.

14. "*Exposed*" means an animal that has not been kept separate and apart or isolated from livestock infected with pseudorabies, including all swine in a known infected herd.

15. "*Exposed livestock*" means livestock that have been in contact with livestock infected with pseudorabies, including all livestock in a known infected herd. However, livestock other than swine that have not been exposed to a clinical case of the disease for a period of ten consecutive days shall not be considered exposed livestock. Swine released from quarantine are no longer considered exposed.

16. "*Farm of origin*" means a location where the swine were born, or on which the swine have been located for at least ninety consecutive days immediately prior to movement.

17. "*Feeder pig*" means an immature swine fed for purposes of direct slaughter which is less than slaughter weight.

18. "*Feeder pig cooperator herd*" means a swine herd not currently determined to be pseudorabies negative, that has not experienced clinical signs of pseudorabies in the last six months, that is capable of segregating offspring at weaning into separate and apart production facilities, and has implemented an approved pseudorabies eradication plan.

19. "*Feeder swine*" means a porcine animal fed for purposes of direct slaughter, including feeder pigs, cull sows, and boars. However, "*feeder swine*" does not include animals kept for purposes of breeding or reproduction.

20. "*Herd*" means a group of swine as established by departmental rule.

21. "*Herd cleanup plan*" means a plan to eliminate pseudorabies from a swine herd. The plan must be developed by an epidemiologist in consultation with the herd owner and the owner's veterinary practitioner. The plan must be approved and signed

by the epidemiologist, the owner, and the practitioner. The plan must be approved and filed with the department.

22. "*Herd of unknown status*" means all swine except swine which are part of a known infected herd, swine known to have been exposed to pseudorabies, or swine which are part of a noninfected herd.

23. "*Infected*" means infected with pseudorabies as determined by an epidemiologist whose diagnosis is supported by test results.

24. "*Infected herd*" means a herd that is known to contain infected swine, a herd containing swine exhibiting clinical signs of pseudorabies, or a herd that is infected according to an epidemiologist.

25. "*Inspection service*" means the animal and plant health inspection service, United States department of agriculture.

26. "*Isolation*" means separation of swine within a physical barrier in a manner to prevent swine from gaining access to swine outside the barrier, including excrement or discharges from swine outside the barrier. Swine in isolation must not share a building with a ventilation system common to other swine. Swine in isolation must not be maintained within ten feet of other swine.

27. "*Known infected herd*" means a herd in which swine have been determined by an epidemiologist to be infected.

28. "*Licensed pseudorabies vaccine*" means a pseudorabies virus vaccine produced under license from the United States secretary of agriculture under the federal Virus, Serum and Toxin Act of March 4, 1913, 21 U.S.C. § 151 et seq.

29. "*Livestock*" means swine, cattle, sheep, goats, horses, ostriches, rheas, or emus.

30. "*Monitored herd*" means a herd of swine, including a feeder swine herd, which has been determined within the past twelve months not to be infected, according to a statistical sampling.

31. "*Move*" or "*movement*" means to ship, transport, or deliver by land, water, or air.

32. "*Noninfected herd*" means a herd which is one of the following:

- a. A qualified pseudorabies negative herd.
- b. A pseudorabies monitored herd.
- c. A pseudorabies controlled vaccinated herd.
- d. A herd in which the animals have been individually tested negative within the past thirty days.
- e. A herd which originates from an area with little or no incidence of pseudorabies as determined by the department based upon epidemiological studies and information relating to the area.
- f. A qualified differentiable negative herd.

33. "*Nonvaccinate*" means a swine which has not been exposed to a pseudorabies vaccine.

34. "*Program area*" means an area designated to be given priority for assignment of a program funded eradication activity.

35. "*Pseudorabies*" means the contagious, infectious, and communicable disease of livestock and other animals known as Aujeszky's disease, mad itch, or infectious bulbar paralysis.

36. “*Pseudorabies eradication plan*” means a written herd management program which is based on accepted statistical and epidemiological evaluation and designed to eradicate pseudorabies from the swine herds in a given area.

36A. “*Qualified differentiable negative herd*” means a herd in which one hundred percent of the herd’s breeding swine have been vaccinated and have reacted negatively to a differentiable test and which have been retested, as provided in this chapter.

37. “*Qualified negative herd*” means a herd in which one hundred percent of the herd’s breeding swine have reacted negatively to a test, and have not been vaccinated, and which is retested as provided in this chapter.

38. “*Quarantined herd*” means a herd in which pseudorabies infected or exposed swine are bred, reared, or fed under the supervision and control of the department. Swine in a quarantined herd may be moved only to an approved premises for feeding or to a recognized slaughtering establishment for slaughter. Either movement may be completed through a concentration point in compliance with section 166D.12.

39. “*Reaction*” means a result determined by an approved laboratory procedure designed to recognize

pseudorabies virus infection or a nondifferentiable vaccinated animal.

40. “*Restricted movement*” means swine which are quarantined until directly moved to slaughter.

41. “*Separate and apart*” means to hold swine so that neither the swine nor organic material originating from the swine has physical contact with other animals.

42. “*Slaughtering establishment*” means a slaughtering establishment operated under the provision of the federal Meat Inspection Act, 21 U.S.C. § 601 et seq., or a slaughtering establishment which has been inspected by the state.

43. “*Statistical sampling*” means a test based on at least a ninety percent probability of detecting at least a ten percent incidence of positive reaction within a herd.

44. “*Test*” means a serum neutralization (SN) test, virus isolation test, ELISA test, or other test approved by the department and performed by a laboratory approved by the department.

45. “*Transportation certificate*” means the same as provided in chapter 172B.

95 Acts, ch 43, §5
Subsection 29 amended

CHAPTER 169A

MARKING AND BRANDING OF LIVESTOCK

169A.1 Definitions.

When used in this chapter:

1. “*Brand*” means an identification mark that is burned into the hide of a live animal by a hot iron or another method approved by the secretary. A brand shall include a cryo-brand.

2. “*Cryo-brand*” means a brand produced by application of extreme cold temperature.

3. “*Livestock*” means horses, cattle, sheep, mules, or asses.

95 Acts, ch 60, §1
Section amended

169A.2 Adoption of brand.

Any person owning livestock may adopt a brand for the purpose of branding the livestock. The person shall have the exclusive right to use the brand in this state, after recording the brand as provided in sections 169A.4 and 169A.6 or 169A.9.

95 Acts, ch 60, §2
Section amended

169A.3 Must be recorded.

Evidence of an animal’s ownership shall not be established in court by the animal’s brand, unless the animal is livestock, the brand complies with the requirements of this chapter, and the brand is recorded as provided in sections 169A.4 and 169A.6 or 169A.9.

95 Acts, ch 60, §3
Section amended

169A.6 Certified copy furnished.

As soon as the brand is recorded by the secretary, the secretary shall furnish the owner of the brand with a certified copy of the record of the brand.

95 Acts, ch 60, §4
Section amended

169A.7 Unlawful use of brand — penalty.

A person shall not use any brand for branding livestock, unless the brand has been recorded as provided by this chapter. A person may use an unrecorded hot brand or an unrecorded cryo-brand, consisting only of Arabic numerals, if the person uses the unrecorded brand in conjunction with the person’s recorded brand, and only for purposes of identifying animals within a herd. However, the unrecorded brand shall not be evidence of ownership. A person convicted of violating this section shall be guilty of an aggravated misdemeanor.

95 Acts, ch 60, §5
Section amended

169A.10 Evidence of ownership.

In a suit at law or equity or in any criminal proceedings in which the title to livestock is an issue, a certified copy recorded as provided for in section 169A.6 or 169A.9 shall be prima facie evidence of the ownership of the livestock by the person in whose name the brand is recorded. A dispute involving the custody or ownership of livestock branded under this

chapter shall be investigated, on request, by the sheriff of the county where the livestock is located. The sheriff may call upon the services of an authorized person, approved by the secretary, in reading the brands on animals. The cost of the services shall be paid by the person requesting the investigation. The results of the sheriff's investigation shall be a public record and is admissible as evidence.

95 Acts, ch 60, §6
Section amended

169A.11 Publication of brands list.

The secretary from time to time shall cause to be published in book form a list of all brands on record at the time of the publication. The secretary may supplement the lists from time to time. The publication shall contain a facsimile of all brands recorded and the owner's name and post office address. The records shall be arranged in convenient form for reference. The secretary shall deliver one copy of the brand book and supplements to the sheriff of each county. The books and supplements shall be delivered without cost to the county. The books and supplements shall be public records as provided in chapter 22. The secretary may sell the books and supplements to the general public at the cost of printing and mailing each book.

95 Acts, ch 60, §7
Section amended

169A.13 Fee each fifth year.

Each owner of a brand of record beginning on January 1, 1970, shall pay to the secretary a fee of five dollars and a renewal fee on January 1 of each fifth year after the payment of the five dollar fee, or on January 1 of each fifth year following the original recording of a brand recorded after June 30, 1975. The amount of the renewal fee required for January 1, 1976, and each year thereafter shall be established by rule of the secretary pursuant to chapter 17A. The

amount of the fee shall be based upon the administrative costs of maintaining the brand program provided for in this chapter. The secretary shall notify every owner of a brand of record at least thirty days prior to the date of the renewal period. If the owner of a brand of record does not pay the fee by July 1 of each year in which it is due, the owner shall forfeit the brand and the brand shall no longer be recorded. A forfeited brand shall not be issued to any other person for five or more years following date of forfeiture.

95 Acts, ch 60, §8
Section amended

169A.15 Effect of prior brands. Repealed by 95 Acts, ch 60, § 10.

169A.16 Elimination of competing brands—fee waiver.

The department shall notify any person who has registered a brand pursuant to this chapter, if the brand is the same as another brand registered pursuant to this chapter. The notice shall provide that effective July 1, 1996, all duplicate brands shall be eliminated based on the priority established pursuant to this section. First, brands shall be eliminated which are not used to mark or identify livestock, if duplicate brands are used to mark or identify livestock. Second, all brands shall be eliminated except for the brand which was registered pursuant to this chapter for the longest period of time. In calculating the date of registration, the department shall not count any period during which a registration has lapsed. The transfer of a brand under this chapter shall not affect the brand's registration date. A person whose brand has been eliminated and who registers a new brand under this chapter is not required to pay a recording fee as provided in section 169A.4.

95 Acts, ch 60, §9
Section repealed effective July 1, 1998; 95 Acts, ch 60, §10
NEW section

CHAPTER 172B

LIVESTOCK TRANSPORTATION

172B.1 Definitions.

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

1. "Law enforcement officer" means a state highway safety patrol officer, a sheriff, or other peace officer so designated by this state or by a county or municipality.

2. "Livestock" means and includes live cattle, swine, sheep, horses, ostriches, rheas, or emus, and the carcasses of such animals whether in whole or in part.

3. "Motor vehicle license" means any license or permit issued to a person to operate a motor vehicle on the highways.

4. "Owner" means a person having legal title to livestock.

5. "Transportation certificate" means the document specified in section 172B.3 and includes either the standard form prescribed by the secretary, or a substitute document the use of which has been authorized by the secretary.

6. "Transporting livestock" means being in custody of or operating a vehicle in this state, whether or not on a highway, in which are confined one or more head of livestock. Vehicle includes a truck, trailer, and other device used for the purpose of conveying objects, whether or not the device has motive power or is attached to a vehicle with motive power at the time the livestock are confined.

95 Acts, ch 43, §6
Subsection 2 amended

CHAPTER 172D

LIVESTOCK FEEDLOTS

172D.1 Definitions.

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

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

2. “Department” means the department of environmental quality in a reference to a time before July 1, 1983, the department of water, air and waste management in a reference to a time on or after July 1, 1983, and through June 30, 1986, and the department of natural resources on or after July 1, 1986, and includes any officer or agency within that department.

3. “Established date of operation” means the date on which a feedlot commenced operating with not more livestock than reasonably could be maintained by the physical facilities existing as of that date. If the physical facilities of the feedlot are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent “established date of operation” established as of this date of commencement of the expanded operations, and the commencement of expanded operations shall not divest the feedlot of a previously established date of operation.

4. “Established date of ownership” means the date of the recording of an appropriate muniment of title establishing the ownership of realty.

5. “Establishment cost of a feedlot” means the cost or value of the feedlot on its established date of operation and includes the cost or value of the building, machinery, vehicles, equipment or other real or personal property used in the operation of the feedlot.

6. “Feedlot” means a lot, yard, corral, or other area in which livestock are confined, primarily for the purposes of feeding and growth prior to slaughter. The term does not include areas which are used for the raising of crops or other vegetation and upon which livestock are allowed to graze or feed.

7. A rule pertaining to “feedlot design standards” means a rule, the implementation of which, or the compliance with which, requires the expenditure of funds in excess of two percent of the establishment cost of the feedlot.

8. A rule pertaining to “feedlot management standards” means a rule, the implementation of which, or the compliance with which, requires the expenditure of funds not in excess of two percent of the establishment cost of the feedlot.

9. “Livestock” means cattle, sheep, swine, ostriches, rheas, emus, poultry, and other animals or fowl, which are being produced primarily for use as food or food products for human consumption.

10. “Materially affects” means prohibits or regulates with respect to the location, or the emission of noise, effluent, odors, sewage, waste, or similar products resulting from the operation or the location or use of buildings, machinery, vehicles, equipment, or other real or personal property used in the operation, of a livestock feedlot.

11. “Nuisance” means and includes public or private nuisance as defined either by statute or by the common law.

12. “Nuisance action or proceeding” means and includes every action, claim or proceeding, whether brought at law, in equity, or as an administrative proceeding, which is based on nuisance.

13. “Owner” shall mean the person holding record title to real estate to include both legal and equitable interests under recorded real estate contracts.

14. “Rule of the department” means a rule as defined in section 17A.2 which materially affects the operation of a feedlot and which has been adopted by the department. The term includes a rule which was in effect prior to July 1, 1975. Except as specifically provided in section 172D.3, subsection 2, paragraph “b”, subparagraph (5) and paragraph “c”, subparagraph (5) nothing in this chapter shall be deemed to empower the department to make any rule.

15. “Zoning requirement” means a regulation or ordinance, which has been adopted by a city, county, township, school district, or any special-purpose district or authority, and which materially affects the operation of a feedlot. Nothing in this chapter shall be deemed to empower any agency described in this subsection to make any regulation or ordinance.

95 Acts, ch 43, §7
Subsection 9 amended

CHAPTER 173

STATE FAIR

173.1 State fair authority.

The Iowa state fair authority is established as a public instrumentality of the state. The authority is not an agency of state government. However, the

authority is considered a state agency and its employees state employees for the purposes of chapters 17A, 20, 91B, 97B, 509A, and 669. The authority is established to conduct an annual state fair and ex-

position on the Iowa state fairgrounds and to conduct other interim events consistent with its rules. The powers of the authority are vested in the Iowa state fair board. The Iowa state fair board consists of the following:

1. The governor of the state, the secretary of agriculture, and the president of the Iowa state university of science and technology or their qualified representatives.
2. Two directors from each congressional district

to be elected at a convention as provided in section 173.2.

3. A president and vice president to be elected by the state fair board from the elected directors.

4. A treasurer to be elected by the board who shall serve as a nonvoting member.

5. A secretary to be elected by the board who shall serve as a nonvoting member.

95 Acts, ch 13, §2

Unnumbered paragraph 1 amended

CHAPTER 174

COUNTY AND DISTRICT FAIRS

174.10 Appropriation — availability.

1. The appropriation which is made biennially for state aid to the foregoing societies shall be available and applicable to incorporated societies of a purely agricultural nature which were entitled to draw eight hundred fifty dollars or more state aid in 1926, or societies located in counties that have no other fair or agricultural society, and which were in existence and drew state aid in 1926, except that in a county where there are two definitely separate county extension offices, two agricultural societies may receive state aid. The provisions of section 174.1 as to ownership of property shall not apply to societies under this section.

2. In counties having two incorporated agricultural societies conducting county fairs, but not having two definitely separate county extension offices, the state aid shall be prorated between the two

societies or, if an official county fair is designated by election, shall be paid to that society determined to be conducting the official county fair. The board of supervisors, upon receiving a petition which meets the requirements of section 331.306, shall submit to the registered voters of the county at the next general election following submission of the petition or at a special election if requested by the petitioners at no cost to the county, the question of which fair shall be designated as the official county fair. Notice of the election shall be given as provided in section 49.53. The fair receiving a majority of the votes cast on the question shall be designated the official county fair. To qualify as the official county fair, the sponsoring society need not meet the conditions provided in subsection 1.

95 Acts, ch 67, §53

Terminology change applied

CHAPTER 175

AGRICULTURAL DEVELOPMENT

175.12 Beginning farmer program.

1. The authority shall develop a beginning farmer loan program to facilitate the acquisition of agricultural land and improvements and depreciable agricultural property by beginning farmers. The authority shall exercise the powers granted to it in this chapter in order to fulfill the goal of providing financial assistance to beginning farmers in the acquisition of agricultural land and agricultural improvements and depreciable agricultural property. The authority may participate in and cooperate with programs of the United States department of agriculture consolidated farm service agency, federal land bank or any other agency or instrumentality of the federal government or with any program of any other state agency in the administration of the beginning farmer loan program and in the making or purchasing of mortgage or secured loans pursuant to this chapter.

2. The authority may participate in any federal programs designed to assist beginning farmers or in any related federal or state programs.

3. The authority shall provide in a beginning farmer loan program that a mortgage or secured loan to or on behalf of a beginning farmer shall be provided only if the following criteria are satisfied:

a. The beginning farmer is a resident of the state. If the beginning farmer is a partnership, all partners shall be residents of the state. If a beginning farmer is a family farm corporation, all shareholders shall be residents of the state. If the beginning farmer is a family farm limited liability company, all members shall be residents of the state.

b. The agricultural land and agricultural improvements or depreciable agricultural property the beginning farmer proposes to purchase will be located in the state.

c. The beginning farmer has sufficient education, training, or experience in the type of farming for which the beginning farmer requests the mortgage or secured loan. If the beginning farmer is a partnership, all partners shall have sufficient education, training, or experience in the type of farming for which the beginning farmer requests the mortgage or secured loan. If the beginning farmer is a family farm corporation, all shareholders who are not minors shall have sufficient education, training, or experience in the type of farming for which the beginning farmer requests the mortgage or secured loan. If the beginning farmer is a family farm limited liability company, all members who are not minors shall have sufficient education, training, or experience in the type of farming for which the beginning farmer requests the mortgage or secured loan.

d. A loan to a beginning farmer for the acquisition of agricultural land and agricultural improvements does not exceed five hundred thousand dollars. A loan to a beginning farmer for the acquisition of depreciable agricultural property does not exceed one hundred twenty-five thousand dollars.

e. If the loan is for the acquisition of agricultural land, the beginning farmer has or will have access to adequate working capital, farm equipment, machinery or livestock. If the loan is for the acquisition of depreciable agricultural property, the beginning farmer has or will have access to adequate working capital or agricultural land.

f. The beginning farmer shall materially and substantially participate in farming. If the beginning farmer is a partnership, family farm corporation, or family farm limited liability company, each partner, shareholder, or member shall materially and substantially participate in farming.

g. If the beginning farmer is an individual, the agricultural land and agricultural improvements shall only be used for farming by the individual, the individual's spouse, or the individual's minor children. If the beginning farmer is a partnership, family farm corporation, or family farm limited liability company, the agricultural land and agricultural improvements shall only be used for farming by any or all of the partners, shareholders, or members, including their spouses and minor children.

h. The beginning farmer has not previously received financing under the program for the acquisition of property similar in nature to the property for which the loan is sought. However, this restriction shall not apply if the amount previously received plus the amount of the loan sought does not exceed five hundred thousand dollars in the case of agricultural land and improvements or one hundred twenty-five thousand dollars in the case of depreciable agricultural property.

i. Other criteria as the authority prescribes by rule.

4. The authority may provide in a mortgage or secured loan made or purchased pursuant to this chapter that the loan may not be assumed or any interest in the agricultural land or improvements or depreciable agricultural property may not be leased, sold or otherwise conveyed without its prior written consent and may provide a due-on-sale clause with respect to the occurrence of any of the foregoing events without its prior written consent. The authority may provide by rule the grounds for permitted assumptions of a mortgage or for the leasing, sale or other conveyance of any interest in the agricultural land or improvements. However, the authority shall provide and state in a mortgage or secured loan that the authority has the power to raise the interest rate of the loan to the prevailing market rate if the mortgage or secured loan is assumed by a farmer who is already established in that field at the time of the assumption of the loan. This provision controls with respect to a mortgage loan made or purchased pursuant to this chapter notwithstanding the provisions of chapter 535.

5. The authority may participate in any interest in any mortgage or secured loan made or purchased pursuant to this chapter with a mortgage lender. The participation interest may be on a parity with the interest in the mortgage or secured loan retained by the authority, equally and ratably secured by the mortgage or securing agreement securing the mortgage or secured loan.

95 Acts, ch 216, §25

Subsection 1, reference to federal agency updated

CHAPTER 176A

COUNTY AGRICULTURAL EXTENSION

176A.6 Elections.

An election shall be held biennially at the time of the general election in each extension district for the election of members of the extension council. All

registered voters of the extension district are entitled to vote in the election.

95 Acts, ch 67, §53

Terminology change applied

CHAPTER 189A

MEAT AND POULTRY INSPECTION

Department to conduct study relating to animal health requirements, including health certificates for farm deer; 95 Acts, ch 134, §7

189A.2 Definitions.

As used in this chapter except as otherwise specified:

1. "Adulterated" shall apply to any livestock product or poultry product under any one or more of the following circumstances:

a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health.

b. (1) If it bears or contains, by reason of administration of any substance to the livestock or poultry or otherwise, any added poisonous or deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive, which may, in the judgment of the secretary, make such article unfit for human food.

(2) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the federal Food, Drug, and Cosmetic Act.

(3) If it bears or contains any food additive which is unsafe within the meaning of section 409 of the federal Food, Drug, and Cosmetic Act.

(4) If it bears or contains any color additive which is unsafe within the meaning of section 706 of the federal Food, Drug, and Cosmetic Act; however, an article which is not otherwise deemed adulterated under subparagraph (2), (3), or (4) of this paragraph shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the secretary in official establishments.

c. If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food.

d. If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

e. If it is, in whole or in part, the product of an animal, including poultry, which has died otherwise than by slaughter.

f. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

g. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to

section 409 of the federal Food, Drug, and Cosmetic Act.

h. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

i. If it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance.

2. "Animal food manufacturer" means any person engaged in the business of preparing animal food, including poultry, derived wholly or in part from livestock or poultry carcasses or parts or products of such carcasses.

3. "Broker" means any person engaged in the business of buying or selling livestock products or poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for the person's own account or as an employee of another person.

4. "Capable of use as human food" shall apply to any livestock or poultry carcass, or part or product of any such carcass, unless it is denatured or otherwise identified as required by regulations prescribed by the secretary to deter its use as human food, or it is naturally inedible by humans.

5. "Container" or "package" means any box, can, tin, cloth, plastic or other receptacle, wrapper, or cover.

6. "Establishment" means all premises where animals or poultry are slaughtered or otherwise prepared, either for custom, resale, or retail, for food purposes, meat or poultry canneries, sausage factories, smoking or curing operations, restaurants, grocery stores, brokerages, cold storage plants, and similar places.

6A. "Farm deer" means an animal belonging to the cervidae family and classified as part of the dama species of the dama genus, commonly referred to as fallow deer; part of the elaphus species of the cervus genus, commonly referred to as red deer or elk; or part of the nippon species of the cervus genus, commonly referred to as sika. However, a farm deer does not include any unmarked free-ranging elk.

7. "Federal Food, Drug, and Cosmetic Act" means the Act so entitled, approved June 25, 1938 (52 Stat. 1040), and Acts amendatory thereof or supplementary thereto.

8. "Federal Meat Inspection Act" means the Act so entitled approved March 4, 1907 (34 Stat. 1260), as

amended by the Wholesome Meat Act (81 Stat. 584); “*Federal Poultry Products Inspection Act*” means the Act so entitled approved August 28, 1957 (71 Stat. 441), as amended by the Wholesome Poultry Products Act (82 Stat. 791); and “*federal Acts*” means these two federal laws.

9. “*Immediate container*” means any consumer package; or any other container in which livestock products or poultry products, not consumer packaged, are packed.

10. “*Inspector*” means an employee or official of the department authorized by the secretary or any employee or official of the government of any county or other governmental subdivision of this state, authorized by the secretary to perform any inspection functions under this chapter under an agreement between the secretary and such governmental subdivision.

11. “*Intrastate commerce*” means commerce within this state.

12. “*Label*” means a display of written, printed, or graphic matter upon any article or the immediate container, not including package liners, of any article.

13. “*Labeling*” means all labels and other written, printed, or graphic matter either upon any article or any of its containers or wrappers, or accompanying such article.

14. “*Livestock*” means a live or dead animal which is limited to cattle, sheep, swine, goats, farm deer, or which is classified as an equine including a horse or mule.

15. “*Livestock product*” means any carcass, part thereof, meat, or meat food product of any livestock.

16. “*Meat food product*” means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the secretary under such conditions as the secretary may prescribe to assure that the meat or other portions of such carcass contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines or farm deer shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

17. “*Misbranded*” shall apply to any livestock product or poultry product under any one or more of the following circumstances:

a. If its labeling is false or misleading in any particular.

b. If it is offered for sale under the name of another food.

c. If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word “imitation”, and immediately thereafter the name of the food imitated.

d. If its container is so made, formed, or filled as to be misleading.

e. Unless it bears a label showing both:

(1) The name and place of business of the manufacturer, packer, or distributor.

(2) An accurate statement of the quantity of the product in terms of weight, measure, or numerical count; however, under this paragraph, exemptions as to livestock products not in containers may be established by regulations prescribed by the secretary, and under this subparagraph reasonable variations may be permitted, and exemptions as to small packages may be established for livestock products or poultry products by regulations prescribed by the secretary.

f. If any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

g. If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by the regulations of the secretary under section 189A.7, unless it conforms to such definition and standard and its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food.

h. If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the secretary under section 189A.7, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

i. If it is not subject to the provisions of paragraph “g” of this subsection, unless its label bears both:

(1) The common or usual name of the food, if any.

(2) In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the secretary, be designated as spices, flavorings, and colorings without naming each; however, to the extent that compliance with the requirements of this subparagraph is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the secretary.

j. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the secretary, after consultation with the secretary of agriculture of the United States, determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for such uses.

k. If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it

bears labeling stating that fact; however, to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the secretary.

17. If it fails to bear, directly thereon and on its containers, as the secretary may by regulations prescribe, the official inspection legend and establishment number of the establishment where the product was prepared and, unrestricted by any of the foregoing, such other information as the secretary may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

18. "Official certificate" means any certificate prescribed by regulations of the secretary for issuance by an inspector or other person performing official functions under this chapter.

19. "Official device" means any device prescribed or authorized by the secretary for use in applying any official mark.

20. "Official establishment" means any establishment as determined by the secretary at which inspection of the slaughter of livestock or poultry or the preparation of livestock products or poultry products is maintained under the authority of this chapter.

21. "Official inspection legend" means any symbol prescribed by regulations of the secretary showing that an article was inspected and passed in accordance with this chapter.

22. "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the secretary to identify the status of any article or livestock or poultry under this chapter.

23. "Person" includes any individual, partnership, corporation, association, or other business unit, and any officer, agent, or employee thereof.

24. "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meanings for purposes of this chapter as under the federal Food, Drug, and Cosmetic Act.

25. "Poultry" means any domesticated bird, whether live or dead.

26. "Poultry product" means any poultry carcass or part thereof, or any product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as

products of the poultry food industry, and which are exempted by the secretary from definition as a poultry product under such conditions as the secretary may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.

27. "Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

28. "Reinspection" includes inspection of the preparation of livestock products and poultry products, as well as re-examination of articles previously inspected.

29. "Renderer" means any person engaged in the business of rendering livestock or poultry carcasses, or parts or products of such carcasses, except rendering conducted under inspection or exemption under this chapter.

30. "Shipping container" means any container used or intended for use in packaging the product packed in an immediate container.

31. "Veterinary inspector" means a graduate veterinarian with appropriate training to perform the inspection functions under the provisions of this chapter.

95 Acts, ch 134, §1-3
NEW subsection 6A
Subsections 14 and 16 amended

189A.18 Humane slaughter practices.

Every establishment subject to the provisions of this chapter engaged in the slaughter of bovine, porcine, or ovine animals or farm deer shall slaughter all such animals in an approved humane slaughtering method. For purposes of this section an approved humane slaughtering method shall include and be limited to slaughter by shooting, electrical shock, captive bolt, or use of carbon dioxide gas prior to the animal being shackle hoisted, thrown, cast or cut; however, the slaughtering, handling or other preparation of livestock in accordance with the ritual requirements of the Jewish or any other faith that prescribes and requires a method whereby slaughter becomes effected by severance of the carotid arteries with a sharp instrument is hereby designated and approved as a humane method of slaughter under the law.

95 Acts, ch 134, §4
Adoption of rules relating to slaughter of ostriches, rheas, and emus; voluntary inspection; fee schedule; 95 Acts, ch 43, §16
Section amended

CHAPTER 192

GRADE A MILK INSPECTION

192.124 Retention of marked container.

A person shall not, without the consent of the owner, retain for a longer period than three days a container bearing a registered mark, and any person receiving such a container shall immediately return

it to the owner by a common carrier. A receipt from a common carrier is prima facie evidence that the container was returned.

95 Acts, ch 67, §14
Section amended

CHAPTER 196

EGG HANDLERS

196.1 Definitions.

Unless the context otherwise requires:

1. "*Candling*" means the careful examination of each shell egg and the elimination of those eggs determined unfit for human consumption.

2. "*Consumer*" means a person who buys eggs for personal consumption.

3. "*Department*" means the department of inspections and appeals, as established in section 10A.102.

4. "*Egg handler*" or "*handler*" means a person who buys or sells eggs, or uses eggs in the preparation of human food. "*Egg handler*" or "*handler*" does not include a retailer, a consumer, an establishment, or a producer who sells eggs as provided in section 196.4.

5. "*Establishment*" means any place in which eggs are offered or sold as human food for consumption by its employees, students, patrons, customers, residents, inmates or patients or as an ingredient in food offered or sold in a form ready for immediate consumption.

6. "*Grading*" means classifying each shell egg by weight and grading in accordance with egg grading standards approved by the United States government as of July 1, 1985, pursuant to the Agricultural Marketing Act of 1946, 7 U.S.C. § 1621 et seq.

7. "*Nest run eggs*" means eggs which have not been denatured, candled, graded, processed or labeled.

8. "*Package*" means the same as defined in section 189.1.

9. "*Producer*" means a person who owns layer type chickens.

10. "*Retailer*" means a person who sells eggs directly to consumers except a producer who sells eggs under the provisions of section 196.4.

95 Acts, ch 7, § 1, 2

NEW subsection 3 and former subsections 3-6 renumbered as 4-7

Former subsection 9 amended and renumbered as 8

Former subsections 7 and 8 renumbered as 9 and 10

196.2 Enforcement.

The department shall enforce this chapter, and may adopt rules pursuant to chapter 17A and consistent with regulations of the United States government as they exist on July 1, 1985, pursuant to the Agricultural Marketing Act of 1946, 7 U.S.C. § 1621 et seq., and the Egg Products Inspection Act of 1970, 21 U.S.C. § 1044 et seq.

95 Acts, ch 7, § 3

Section amended

CHAPTER 196A

IOWA EGG COUNCIL

196A.1 Definitions.

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

1. "*Assessment*" means an excise tax on the sale of eggs as provided in this chapter.

2. "*Council*" means the Iowa egg council.

3. "*Egg by-product*" means a product produced in whole or in part from eggs or spent fowl.

4. "*Eggs*" means eggs produced from a layer-type chicken. "*Eggs*" includes shell eggs or eggs broken for further processing, but does not include fertile eggs that are incubated, hatched, or used for vaccines.

5. "*Market development*" means research and educational programs which are directed toward:

a. Better and more efficient production, marketing, and utilization of eggs or egg by-products produced for resale.

b. Better methods, including, but not limited to, public relations and other promotion techniques, for the maintenance of present markets and for the development of new or larger domestic or foreign markets and for the sale of eggs or egg by-products.

c. Prevention, modification, or elimination of trade barriers which obstruct the free flow of eggs or egg by-products to market.

6. "*Processor*" means the first purchaser of eggs from a producer, or a person who both produces and processes eggs.

7. "*Producer*" means any person who owns, or contracts for the care of, thirty thousand or more layer-type chickens raised in this state.

8. "*Purchaser*" means a person who resells eggs purchased from a producer or offers for sale a product produced from the eggs for any purpose.

9. "*Qualified financial institution*" means a bank, credit union, or savings and loan as defined in section 12C.1.

95 Acts, ch 7, § 4

Section amended

196A.2 Petition for election. Repealed by 95 Acts, ch 7, § 18. See § 196A.4.

196A.3 Notice of referendum. Repealed by 95 Acts, ch 7, § 18. See § 196A.4.

196A.4 Establishment of Iowa egg council and assessment.

1. The secretary shall call and the department shall conduct a referendum upon the department's

receipt of a petition which is signed by at least twenty producers requesting a referendum to determine whether to establish an Iowa egg council and to impose an assessment as provided in section 196A.4A. The referendum shall be conducted within sixty days following receipt of the petition. The petitioners shall guarantee payment of the cost of the referendum by providing evidence of financial security as required by the department.

2. The department shall give notice of the referendum on the question whether to establish a council and to impose an assessment by publishing the notice for a period of not less than five days in at least one newspaper of general circulation in the state. The notice shall state the voting places, period of time for voting, and other information deemed necessary by the department. A referendum shall not be commenced until five days after the last date of publication.

3. Each producer who signs a statement certifying that the producer is a bona fide producer shall be entitled to one vote. At the close of the referendum, the secretary shall count and tabulate the ballots cast. If a majority of voters favor establishing an Iowa egg council and imposing an assessment, a council shall be established, and an assessment shall be imposed commencing not more than sixty days following the referendum as determined by the council and shall continue for a period of five years unless extended as provided in section 196A.4C. If a majority of the voters do not favor establishing the council and imposing the assessment, the council shall not be established and an assessment shall not be imposed until another referendum is held under this chapter and a majority of the voters approve establishing a council and imposing the assessment. If a referendum should fail, another referendum shall not be held within one hundred eighty days.

4. Immediately after passage of the question at the referendum, the secretary shall appoint seven members to the council in accordance with section 196A.5 based on nominations made by the Iowa poultry association. The association shall nominate and the secretary shall appoint two members representing large producers, two members representing medium producers, and three members representing small producers. The department, in consultation with the association, shall determine initial classifications for small, medium, and large producers. The secretary shall complete the appointments within thirty days following passage of the question at the referendum.

95 Acts, ch 7, §5
Section amended

196A.4A Assessment.

If approved by a majority of voters at a referendum as provided in this chapter, an assessment amount set by the council at not more than five cents for each thirty dozen eggs produced in this state shall be imposed on the producer at the time of delivery to a purchaser who will deduct the assessment from the

price paid to the producer at the time of sale. The assessment shall not be refundable. The assessment is due to be paid to the council within thirty days following each calendar quarter, as provided by the council.

If the producer sells eggs to a purchaser outside the state of Iowa, the producer shall deduct the tax from the amount received from the sale and shall forward the amount deducted to the council within thirty days following each calendar quarter. If the producer and processor are the same person, then that person shall pay the assessment to the council within thirty days following each calendar quarter.

95 Acts, ch 7, §14
Section amended
Section transferred from §196A.15

196A.4B Invoice required.

At the time of sale, the purchaser shall sign and deliver to the producer separate invoices for each purchase. The invoices shall show:

1. The name and address of the producer and the seller, if different from the producer.
2. The name and address of the purchaser.
3. The quantity of eggs sold.
4. The date of the purchase.
5. The rate of withholding and the total amount of assessment withheld.

Invoices shall be legibly written and shall not be altered.

95 Acts, ch 7, §15
Subsection 5 amended
Section transferred from §196A.16

196A.4C Referendums conducted during the tenure of the council and assessment.

1. A referendum shall be conducted as follows:

- a. A referendum to extend the imposition of the assessment imposed pursuant to section 196A.4 shall be held every five years in the year prior to the expiration of the assessment in force.

- b. The secretary shall call, and the department shall conduct, a referendum upon the department's receipt of a petition which is signed by at least twenty producers requesting a referendum to determine whether to terminate the council and the imposition of the assessment. The referendum shall be conducted within sixty days following receipt of the petition. The petitioners shall guarantee payment of the cost of the referendum by providing evidence of financial security as required by the department.

2. The following procedures shall apply to a referendum:

- a. The department shall give notice of the referendum on the question whether to continue the council and the assessment by publishing the notice for a period of not less than five days in at least one newspaper of general circulation in the state. The notice shall state the voting places, period of time for voting, and other information deemed necessary by the department. A referendum shall not be commenced until five days after the last date of publication.

b. Upon signing a statement certifying to the secretary that a person is a bona fide producer, the person is entitled to one vote in each referendum conducted pursuant to this section. The department shall conduct the referendum and count and tabulate the ballots filed during the referendum within thirty days following the close of the referendum.

(1) If a majority of the total number of producers voting in the referendum approves the continuation of the council and the assessment as provided in the referendum, the council shall remain in existence and the assessment shall be levied as provided in this chapter.

(2) If a majority of the total number of producers voting in referendum held pursuant to this section do not approve continuing the council and the assessment as provided in the referendum, the secretary shall terminate collection of the assessment on the first day of the year for which the referendum was to continue. The secretary shall terminate the activities of the council in an orderly manner as soon as practicable after the determination. An additional referendum may be held as provided in section 196A.4. However, the subsequent referendum shall not be held within one hundred eighty days.

95 Acts, ch 7, §6
NEW section

196A.5 Composition of council.

The Iowa egg council established under this chapter shall be composed of seven producers. Each council member must be a natural person who is a producer or an officer, equity owner, or employee of a producer. A producer shall not be represented more than once on the council. Two persons shall represent large producers, two persons shall represent medium producers, and three persons shall represent small producers. The council shall adopt rules pursuant to chapter 17A establishing classifications for large, medium, and small producers. The following persons or their designees shall serve as ex officio nonvoting members:

1. The secretary.
2. The director of the Iowa department of economic development.
3. The chairperson of the poultry science section of the department of animal science at Iowa state university of science and technology.

95 Acts, ch 7, §7
Section amended

196A.5A Terms and administration procedures.

1. A person shall serve as a member on the council for a term of three years. A person may serve as a member on the council for more than one term. However, if a person serves for two complete consecutive terms, the person must wait at least twelve months prior to serving another term.
2. The council shall elect a chairperson, and other officers as needed, from among its voting members who shall serve for a one-year term, and may be reelected to serve subsequent terms according to

procedures adopted by the council.

3. A majority of voting members of the council present during a meeting shall constitute a quorum. A majority of the members present during a meeting is necessary to carry out the duties and exercise the powers of the council as provided in this chapter, unless the council requires a greater number.

4. The council shall meet at least once every three months and at other times the council determines are necessary.

95 Acts, ch 7, §8
Council to implement 1995 changes; transitional terms, nominations, and elections; see 95 Acts, ch 7, §19
NEW section

196A.5B Election and appointment procedures.

1. The council shall appoint a committee to nominate candidates to stand for election to the council. The council may require that the committee nominate candidates to be appointed by the council to fill a vacancy in a position for the unexpired term of a member. The committee shall be comprised of five producers, including the chairperson of the council who shall serve as the chairperson of the nominating committee. The nominating committee shall include at least one member of the council whose term is next to expire. The committee shall also include at least one producer who is classified as a large producer, if a member whose term is to expire represents large producers; at least one producer who is classified as a medium producer, if a member whose term is to expire represents medium producers; and at least one producer who is classified as a small producer, if a member whose term is to expire represents small producers.

2. The council shall appoint a producer to fill a member's position occurring because of a vacancy on the council. The person appointed to fill the vacancy must meet the same requirements as a person elected to that position. The person shall serve for the remainder of the unexpired term.

3. A notice of an election for members of the council shall be provided by the council by publication in a newspaper of general circulation in the state and in any other reasonable manner required by the council. The notice shall include the period of time for voting, voting places, and any other information determined necessary by the council.

95 Acts, ch 7, §9
NEW section

196A.6 Initial appointments. Repealed by 95 Acts, ch 7, § 18. See § 196A.4.

196A.7 Notice of subsequent elections. Repealed by 95 Acts, ch 7, § 18. See § 196A.5B.

196A.8 Terms. Repealed by 95 Acts, ch 7, § 18. See § 196A.5A.

196A.9 Subsequent membership. Repealed by 95 Acts, ch 7, § 18. See § 196A.5B.

196A.10 Vacancies. Repealed by 95 Acts, ch 7, § 18. See § 196A.5B.

196A.11 Duties of council.

The Iowa egg council shall:

1. Provide methods, including, but not limited to public relations and other promotion techniques, for the maintenance of present markets. However, the council shall not impose any marketing order or similar restriction.

2. Assist in other market development.

3. Administer elections for members of the council and provide for the appointment of persons to fill vacancies occurring on the council, as provided in section 196A.5B. The department may assist the council in administering an election, upon request to the secretary by the council.

4. Perform all acts necessary to effectuate the provisions of this chapter.

95 Acts, ch 7, §10

NEW subsection 3 and former subsection 3 renumbered as 4

196A.12 Powers of council.

The Iowa egg council may:

1. Employ and discharge assistants and professional counsel as necessary, prescribe their duties and powers and fix their compensation.

2. Establish offices, incur expenses and enter into any contracts or agreements necessary to carry out the purposes of this chapter.

3. Adopt, rescind and amend all proper and necessary rules for the exercise of its powers and duties.

4. Enter into arrangements for the collection of the assessment.

95 Acts, ch 7, §11

Subsection 4 amended

196A.13 Prohibited actions.

The council shall not do any of the following:

1. Become a dues-paying member of any organization, including but not limited to a firm, association, or corporation, regardless of whether the organization is public or private. However, upon approval by the council, the council may become a dues-paying member of an organization carrying out a purpose related to the increased consumption and utilization of eggs or egg by-products.

2. Provide direct or indirect financial support to or for any other person, except as provided in subsection 1 or for contracts for services related to research, promotional, or public relations programs, or for the administrative expenses of the council.

3. Act, directly or indirectly, in any capacity in marketing or making contracts for the marketing of eggs or egg by-products.

4. Act, directly or indirectly, in any capacity in selling or contracting for the selling of egg or egg by-product equipment.

5. Make any contribution of council moneys, either directly or indirectly, to any political party or organization or in support of a political candidate for public office, or make payments to a political candi-

date including but not limited to a member of Congress or the general assembly for honorariums, speeches, or for any other purposes above actual and necessary expenses.

95 Acts, ch 7, §12
Section amended

196A.14 Compensation.

Members of the council may receive payment for their actual expenses and travel in performing official council functions. Payment shall be made from amounts collected from the assessment. A member of the council shall not be a salaried employee of the council or any organization or agency receiving moneys from the council.

95 Acts, ch 7, §13
Section amended

196A.14A Not a state agency. Transferred to § 196A.26 in Code Supplement 1995.

196A.15 Tax. Transferred to § 196A.4A in Code Supplement 1995.

196A.16 Invoice required. Transferred to § 196A.4B in Code Supplement 1995.

196A.17 Administration of moneys.

Subject to the provisions of section 196A.4A, the assessment imposed by this chapter shall be remitted by the purchaser to the council not later than thirty days following each calendar quarter during which the assessment was collected. Amounts collected from the assessment shall be deposited in the office of the treasurer of state in a separate fund to be known as the Iowa egg fund. The department of revenue and finance shall transfer moneys from the fund to the council for deposit into an account established by the council in a qualified financial institution. The department shall transfer the moneys as provided in a resolution adopted by the council. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open.

95 Acts, ch 209, §22
Section amended

196A.18 Refunds. Repealed by 95 Acts, ch 7, § 18.

196A.19 Use of moneys — appropriation — audit.

All moneys deposited in the Iowa egg fund and transferred to the council as provided in section 196A.17, are appropriated and shall be used for the administration of this chapter and for the payment of claims based upon obligations incurred in the performance of activities and functions set forth in this chapter.

Moneys collected, deposited in the fund, and transferred to the council as provided in this chapter are subject to audit by the auditor of state. The moneys

transferred to the council shall be used by the council first for the payment of collection expenses, second for payment of the costs and expenses arising in connection with conducting referendums, and third for market development. Moneys remaining after a referendum is held when a majority of the voters do not favor extending the assessment shall continue to be expended in accordance with this chapter until exhausted.

95 Acts, ch 7, §16
Unnumbered paragraph 2 amended

196A.24 Purchasers outside Iowa.

The secretary may enter into arrangements with purchasers from outside Iowa for payment of the assessment.

95 Acts, ch 7, §17
Section amended

196A.26 Not a state agency.

The Iowa egg council is not an agency of state government.

Section transferred from §196A.14A

CHAPTER 198

COMMERCIAL FEED

198.9 Inspection fees and reports.

1. An inspection fee to be fixed annually by the secretary at a rate of not more than sixteen cents per ton, shall be paid on commercial feed distributed in this state by the person who first distributes the commercial feed, subject to the following:

a. The inspection fee is not required on the first distribution, if made to a qualified buyer who, with approval from the secretary, shall become responsible for the fee.

b. A fee shall not be paid on a commercial feed if the payment has been made by a previous distributor.

c. A fee shall not be paid on customer-formula feeds if the inspection fee is paid on the commercial feeds which are used as components of the customer-formula feeds.

d. A minimum semiannual fee shall be twenty dollars.

e. A licensed manufacturer shall pay the inspection fee on commercial feed that is fed to livestock owned by the licensee.

In the case of a pet food or specialty pet food, which is distributed in this state in packages of ten pounds or less, each product shall be registered and an annual registration fee of fifty dollars for each product shall be paid by January 1 of each year in lieu of the per ton rate as provided in this subsection. The inspection fee shall apply to those same products distributed in packages of more than ten pounds.

2. Each person who is liable for the payment of such fee shall:

a. File, not later than the last day of January and July of each year, a semiannual statement, setting forth the number of net tons of commercial feeds distributed in this state during the preceding six months and upon filing the statement shall pay the inspection fee at the rate stated in subsection 1. Inspection fees which are due and owing and have not been remitted to the secretary within fifteen days following the due date shall have a delinquency fee of ten percent of the amount due or fifty dollars, whichever is greater, added to the amount due when payment is finally made. The assessment of this delin-

quency fee does not prevent the department from taking other actions as provided in this chapter.

b. Keep such records as may be necessary or required by the secretary to indicate accurately the tonnage of commercial feed distributed in this state, and the secretary shall have the right to examine such records to verify statements of tonnage.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided in this section is sufficient cause for cancellation of the license of the distributor.

3. Fees collected shall be deposited in the general fund of the state and shall be subject to the requirements of section 8.60. Moneys deposited under this section shall be used for the payment of the costs of inspection, sampling, analysis, supportive research, and other expenses necessary for the administration of this chapter.

If there is an unencumbered balance of funds from the fees deposited under this section on June 30 of any fiscal year equal to or exceeding one hundred thousand dollars, the secretary of agriculture shall reduce the per ton fee provided for in subsection 1 for the next fiscal year in such amount as will result in an ending estimated balance of the fees deposited less costs paid for from those fees for June 30 of the next fiscal year of one hundred thousand dollars.

The secretary shall publish a report not later than January 1 of each year. The report shall provide a detailed accounting of all sources of revenue deposited under and all dispositions of funds expended under this section. The report shall detail full-time equivalent positions used in fulfilling the requirements of this chapter. The report shall also indicate to what extent any full-time equivalent positions are shared with other programs. Copies of the report issued by the secretary pursuant to this subsection shall be delivered each year to the members of the house of representatives and senate standing committees on agriculture.

95 Acts, ch 42, §1
Subsection 3, unnumbered paragraph 3 amended

198.10 Rules.

1. The secretary may adopt rules for commercial feeds and pet foods as specifically authorized in this chapter and other reasonable rules necessary in order to carry out the purpose and intent of this chapter or to secure the efficient enforcement of this chapter. In the interest of uniformity the secretary shall adopt any rule based on regulations promulgated under the authority of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., provided the secretary has the authority under this chapter to adopt the rule. However, the secretary is not required to adopt such a rule, if the secretary determines that the rule would be inconsistent with this chapter or not appropriate to conditions which exist in this state.

2. Before the issuance, amendment, or repeal of a rule authorized by this chapter, the secretary shall publish the proposed rule, amendment, or notice to repeal an existing rule in a manner reasonably cal-

culated to give interested parties, including all current licensees, adequate notice, and shall afford all interested persons an opportunity to be heard, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the secretary shall take appropriate action to issue the proposed rule or to amend or repeal an existing rule. However, if the secretary adopts rules based on regulations promulgated under the authority of the federal Food, Drug, and Cosmetic Act, any amendment or modification adopted by the United States secretary of health and human services shall be adopted automatically under this chapter without regard to publication of the notice required by this subsection, unless the secretary by order specifically determines that an amendment or modification shall not be adopted.

95 Acts, ch 42, §2
Section amended

CHAPTER 201
AGRICULTURAL LIME

201.1 Definitions.

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

1. "Agricultural lime", "limestone" or "aglime" shall include all calcium and magnesium products sold for agricultural purposes in the oxide, hydrate, or carbonate form; such form being designated as quicklime, hydrated lime, carbonate of lime, and crushed or ground limestone.

2. "ECCE" shall mean effective calcium carbonate equivalent.

3. "Number four", "number eight" and "number sixty" mesh sieve as used herein shall mean four, eight and sixty meshes respectively per linear inch, according to the specifications of the American society for testing materials.

4. "Permanent fixed plants" as used in this chapter shall mean stationary crushing and screening equipment which is immobile.

5. "Portable plants" as used in this chapter shall mean mobile crushing and screening equipment mounted on wheels.

6. "Ton" shall mean two thousand avoirdupois pounds.

95 Acts, ch 216, §25
Subsection 2 stricken by Code editor per directive to update references to federal agency
Former subsections 3-7 renumbered as 2-6

201.9 Certification by United States department of agriculture.

The secretary of agriculture may adopt the certification of pounds of ECCE issued by the United States department of agriculture consolidated farm service agency and if adopted shall constitute compliance with this chapter.

95 Acts, ch 216, §25
References to federal agency updated

201.10 Pounds of ECCE per ton.

All agricultural lime, limestone or aglime sold, offered, or exposed for sale shall be sold, offered, or exposed for sale by the pound of ECCE. Any person who shall sell, offer, or expose for sale or who shall ship, transport, or deliver agricultural lime, limestone, or aglime shall affix, or cause to be affixed, to every bill of lading, scale ticket, ticket, delivery receipt or other instrument of sale, shipping or delivery, plainly thereon in the English language, the certification of the secretary of agriculture of the number of pounds of ECCE per ton in the agricultural lime, limestone or aglime, and the name, brand, or trademark under which the agricultural lime, limestone or aglime is sold, the name of the manufacturer, producer or shipper, and the location of the principal office of the manufacturer, producer or shipper. The certification shall be in the following form:

Iowa Secretary of Agriculture Certified
..... pounds ECCE per ton.

The pounds of ECCE certified by the secretary of agriculture for the agricultural lime, limestone, or aglime shall be inserted in the space provided.

In case the secretary of agriculture shall adopt the certification of number of pounds of ECCE of the United States department of agriculture consolidated farm service agency, the following form will effect full compliance with this section:

USDA certified
..... pounds ECCE per ton.

95 Acts, ch 216, §25
References to federal agency updated

CHAPTER 203

GRAIN DEALERS

203.1 Definitions.

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

1. *"Bond"* means a bond issued by a surety company or an irrevocable letter of credit issued by a financial institution described in subsection 5.

2. *"Credit-sale contract"* means a contract for the sale of grain pursuant to which the sale price is to be paid more than thirty days after the delivery of the grain to the buyer, or a contract which is titled as a credit-sale contract, including but not limited to those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.

3. *"Custom livestock feeder"* means a person who buys grain for the sole purpose of feeding it to livestock owned by another person in a feedlot as defined in section 172D.1, subsection 6, or a confinement building owned or operated by the custom livestock feeder and located in this state.

4. *"Department"* means the department of agriculture and land stewardship.

5. *"Financial institution"* means a bank or savings and loan association authorized by the state of Iowa or by the laws of the United States, which is a member of the federal deposit insurance corporation or the federal savings and loan insurance corporation, respectively; or the national bank for cooperatives established in the Agricultural Credit Act, Pub. L. No. 100-233.

6. *"Good cause"* means that the department has cause to believe that the net worth or current asset to current liability ratio of a grain dealer presents a danger to sellers with whom the grain dealer does business, based on evidence of any of the following:

a. The making of a payment by use of a financial instrument which is a check, share draft, draft, or written order on a financial institution, and a financial institution refuses payment on the instrument because of insufficient funds in a grain dealer's account.

b. A violation of recordkeeping requirements provided in this chapter or rules adopted pursuant to this chapter by the department.

c. A substantial risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer based on a statistical model provided in section 203.22.

7. *"Grain"* means any grain for which the United States department of agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt (emmer) and field peas.

8. *"Grain dealer"* means a person who buys during any calendar month five hundred bushels of grain or more from the producers of the grain for purposes of resale, milling, or processing. However, *"grain dealer"* does not include a producer of grain who is buying grain for the producer's own use as seed or feed; a person solely engaged in buying grain future contracts on the board of trade; a person who purchases grain only for sale in a registered feed; a person who purchases grain for sale in a nonregistered customer-formula feed regulated by chapter 198, who purchases less than a total of fifty thousand bushels of grain annually from producers, and who is also exempt as an incidental warehouse operator under chapter 203C; a person engaged in the business of selling agricultural seeds regulated by chapter 199; a person buying grain only as a farm manager; an executor, administrator, trustee, guardian, or conservator of an estate; a bargaining agent as defined in section 203A.1; or a custom livestock feeder.

9. *"Producer"* means the owner, tenant, or operator of land in this state who has an interest in and receives all or a part of proceeds from the sale of grain produced on that land.

10. *"Seller"* means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, and includes a person who executes a credit sale contract as a seller.

95 Acts, ch 28, §1
Subsection 2 amended

CHAPTER 203C

WAREHOUSES FOR AGRICULTURAL PRODUCTS

203C.1 Definitions.

As used in this chapter:

1. *"Agricultural product"* shall mean any product of agricultural activity suitable for storage in quantity, including refined or unrefined sugar and canned agricultural products and shall also mean any product intended for consumption in the production of other agricultural products, such as stock salt, bind-

ing twine, bran, cracked corn, soybean meal, commercial feeds, and cottonseed meal.

2. *"Bond"* means a bond issued by a surety company or an irrevocable letter of credit issued by a financial institution described in subsection 25.

3. *"Bulk grain"* shall mean grain which is not contained in sacks.

4. *"Credit-sale contract"* means a contract for the

sale of grain pursuant to which the sale price is to be paid more than thirty days after the delivery of the grain to the buyer, or a contract which is titled as a credit-sale contract, including but not limited to those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.

5. "*Department*" means the department of agriculture and land stewardship.

6. "*Depositor*" means any person who deposits an agricultural product in a warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding warehouse receipt, or who is lawfully entitled to possession of the agricultural product.

7. "*Financial institution*" means a bank or savings and loan association authorized by the state of Iowa or by the laws of the United States, which is a member of the federal deposit insurance corporation or the federal savings and loan insurance corporation, respectively; or the national bank for cooperatives established in the Agricultural Credit Act, Pub. L. No. 100-233.

7A. "*Good cause*" means that the department has cause to believe that the net worth or current asset to current liability ratio of a warehouse operator presents a danger to depositors with whom the warehouse operator does business, based on evidence of any of the following:

a. The making of a payment by use of a financial instrument which is a check, share draft, draft, or written order on a financial institution, and a financial institution refuses payment on the instrument because of insufficient funds in the warehouse operator's account.

b. A violation of recordkeeping requirements provided in this chapter or rules adopted pursuant to this chapter by the department.

c. A quality or quantity shortage in the warehouse facility.

d. A high risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the warehouse operator based on a statistical model provided in section 203C.40.

8. "*Grain*" shall mean wheat, corn, oats, barley, rye, flaxseed, field peas, soybeans, grain sorghums, spelt, and similar agricultural products, as defined in the Grain Standards Act.

9. "*Grain bank*" means grain owned by a depositor and held temporarily by the warehouse operator for use in the formulation of feed or to be processed and returned to the depositor on demand.

10. "*Grain Standards Act*" means the United States Grain Standards Act, 7 U.S.C. ch. 3.

11. "*Incidental warehouse operator*" means a person regulated under chapter 198 whose grain storage capacity does not exceed twenty-five thousand bushels which is used exclusively for grain owned or grain which will be returned to the depositor for use in a feeding operation or as an ingredient in a customer-formula feed, as defined in section 198.1.

12. "*License*" means a license issued under this chapter.

13. "*Licensed warehouse*" shall mean a warehouse for the operation of which the department has issued a license in accordance with the provisions of section 203C.6.

14. "*Licensed warehouse operator*" shall mean a warehouse operator who has obtained a license for the operation of a warehouse under the provisions of section 203C.6.

15. "*Official grain standards*" means the standards of quality and condition of grain which establishes the grade, fixed and established by the secretary of agriculture under the Grain Standards Act.

16. "*Open storage*" means grain or agricultural products which are received by a warehouse operator from a depositor for which warehouse receipts have not been issued or a purchase made and the records documented accordingly.

17. "*Person*" shall mean an individual, corporation, partnership, or two or more persons having a joint or common interest in the same venture, and, except with respect to the privilege of operating a warehouse under this chapter, shall include the United States or Iowa state government, or any subdivision or agency of either.

18. "*Receiving and loadout charge*" shall mean the charge made by the warehouse operator for receiving grain into and loading grain from the warehouse, exclusive of the warehouse operator's other charges.

19. "*Scale weight ticket*" means a load slip or other evidence, other than a receipt, given to a depositor by a warehouse operator licensed under this chapter upon initial delivery of the agricultural product to the warehouse.

20. "*Station*" means a warehouse located more than three miles from the central office of the warehouse.

21. "*Storage*" means any grain or other agricultural products that have been received and have come under care, custody or control of a warehouse operator either for the depositor for which a contract of purchase has not been negotiated or for the warehouse operator operating the facility.

22. "*Warehouse*" shall mean any building, structure, or other protected enclosure in this state used or usable for the storage of agricultural products. Buildings used in connection with the operation of the warehouse shall be deemed to be a part of the warehouse.

23. "*Warehouse operator*" means a person engaged in the business of operating or controlling a warehouse for the storing, shipping, handling or processing of agricultural products, but does not include an incidental warehouse operator.

24. "*Warehouse operator's obligation*" means a sufficient quantity and quality of grain or other products for which a warehouse operator is licensed including company owned grain and grain of depositors as the warehouse operator's records indicate. For an unlicensed warehouse operator it means a sufficient quantity and quality to cover company owned and all deposits of grain for which actual payment has not been made. At no time may a warehouse operator have less grain or other agricultural products in the

warehouse than the obligations to depositors, as determined by investigation of the warehouse operator's records.

25. "Unlicensed warehouse operator" means a warehouse operator who retains grain in the ware-

house not to exceed thirty days and is not licensed under the provisions of this chapter or Title VII, U.S.C.

95 Acts, ch 28, §2
Subsection 4 amended

CHAPTER 204

MANURE STORAGE INDEMNITY FUND

Former chapter 204 was transferred
to chapter 124 in Code 1993

204.1 Definitions.

1. "Animal unit" means a unit of measurement used to determine the animal capacity of a confinement feeding operation, based upon the product of multiplying the number of animals of each species by the following:

a. Slaughter and feeder cattle	1.0
b. Mature dairy cattle	1.4
c. Butcher and breeding swine, over fifty-five pounds	0.4
d. Sheep or lambs	0.1
e. Horses	2.0
f. Turkeys	0.018
g. Broiler or layer chickens	0.01

2. "Animal weight capacity" means the same as defined in section 455B.161.

3. "Confinement feeding operation" means a confinement feeding operation as defined in section 455B.161.

4. "Department" means the department of agriculture and land stewardship.

5. "Fund" means the manure storage indemnity fund created in section 204.2.

6. "Indemnity fee" means the fee provided in section 204.3.

7. "Manure" means animal excreta or other commonly associated wastes of animals, including but not limited to bedding, litter, or feed losses.

8. "Manure storage structure" means a structure used to store manure as part of a confinement feeding operation subject to a construction permit issued by the department of natural resources pursuant to section 455B.173. A manure storage structure includes, but is not limited to, an anaerobic lagoon, formed manure storage structure, or earthen manure storage basin, as defined in section 455B.161.

9. "Permittee" means a person who obtains a permit for the construction of a manure storage structure, or a confinement feeding operation, if a manure storage structure is connected to the confinement feeding operation.

95 Acts, ch 195, §4
NEW section

204.2 Manure storage indemnity fund.

1. A manure storage indemnity fund is created as a separate fund in the state treasury under the

control of the department. The general fund of the state is not liable for claims presented against the fund.

2. The fund consists of moneys from indemnity fees remitted by permittees to the department of natural resources and transferred to the department of agriculture and land stewardship as provided in section 204.3; sums collected on behalf of the fund by the department through legal action or settlement; moneys required to be repaid to the department by a county pursuant to this chapter; civil penalties assessed and collected by the department of natural resources pursuant to chapter 455B, against permittees; moneys paid as a settlement involving an enforcement action for a civil penalty subject to assessment and collection against permittees by the department of natural resources pursuant to chapter 455B; interest, property, and securities acquired through the use of moneys in the fund; or moneys contributed to the fund from other sources.

3. The moneys collected under this section and deposited in the fund shall be appropriated to the department for the exclusive purpose of indemnifying a county for expenses related to cleaning up the site of the confinement feeding operation, including removing and disposing of manure from a manure storage structure, and to pay the department for costs related to administering the provisions of this chapter. For each fiscal year, the department shall not use more than one percent of the total amount which is available in the fund or ten thousand dollars, whichever is less, to pay for the costs of administration. Moneys in the fund shall not be subject to appropriation or expenditure for any other purpose.

4. The treasurer of state shall act as custodian of the fund and disburse amounts contained in the fund as directed by the department. The treasurer of state is authorized to invest the moneys deposited in the fund. The income from such investment shall be credited to and deposited in the fund. Notwithstanding section 8.33, moneys in the fund are not subject to reversion to the general fund of the state. The fund shall be administered by the department which shall make expenditures from the fund consistent with the purposes set out in this chapter. The moneys in the fund shall be disbursed upon warrants drawn by the director of revenue and finance pursuant to the order

of the department. The fiscal year of the fund begins July 1. The finances of the fund shall be calculated on an accrual basis in accordance with generally accepted accounting principles. The auditor of state shall regularly perform audits of the fund.

5. On August 31 following the close of each fiscal year, moneys which are not obligated or encumbered on June 30 of the past fiscal year, less the department's estimate of the cost to the fund for pending or unsettled claims, and which are in excess of one million dollars, shall be deposited in the organic nutrient management fund as created in section 161C.5 for purposes of supporting the organic nutrient management program.

95 Acts, ch 195, §5
NEW section

204.3 Fees.

An indemnity fee shall be assessed upon permittees which shall be paid to and collected by the department of natural resources, prior to issuing a permit for the construction of a confinement feeding operation as provided in section 455B.173. The amount of the fees shall be based on the following:

1. If the confinement feeding operation has an animal weight capacity of less than six hundred twenty-five thousand pounds, the following shall apply:

a. For all animals other than poultry, the amount of the fee shall be five cents per animal unit of capacity for confinement feeding operations.

b. For poultry, the amount of the fee shall be two cents per animal unit of capacity for confinement feeding operations.

2. If the confinement feeding operation has an animal weight capacity of six hundred twenty-five thousand or more pounds but less than one million two hundred fifty thousand pounds, the following shall apply:

a. For all animals other than poultry, the amount of the fee shall be seven and one-half cents per animal unit of capacity for confinement feeding operations.

b. For poultry, the amount of the fee shall be three cents per animal unit of capacity for confinement feeding operations.

3. If the confinement feeding operation has an animal weight capacity of one million two hundred fifty thousand or more pounds, the following shall apply:

a. For all animals other than poultry, the amount of the fee shall be ten cents per animal unit of capacity for confinement feeding operations.

b. For poultry, the amount of the fee shall be four cents per animal unit of capacity for confinement feeding operations.

The department of natural resources shall deposit moneys collected from the fees into the fund according to procedures adopted by the department of agriculture and land stewardship.

95 Acts, ch 195, §6
Applicability of indemnity fees to prior permittees; notice; penalty; collection; 95 Acts, ch 195, §38
NEW section

204.4 Claims against the fund.

1. A county that has acquired real estate containing a manure storage structure following nonpayment of taxes pursuant to section 446.19, may make a claim against the fund to pay the costs of cleaning up the site of the confinement feeding operation, including the costs of removing and disposing of the manure from a manure storage structure. Each claim shall include a bid by a qualified person, other than a governmental entity, to remove and dispose of the manure for a fixed amount specified in the bid.

2. The department shall determine if a claim is eligible to be satisfied under this section, and do one of the following:

a. Pay the amount of the claim required in this section, based on the fixed amount specified in the bid submitted by the county upon completion of the work.

b. Obtain a lower fixed amount bid for the work from another qualified person, other than a governmental entity, and pay the amount of the claim required in this section, based on the fixed amount in this bid upon completion of the work. The department is not required to comply with section 18.6 in implementing this section.

3. Upon a determination that the claim is eligible for payment, the department shall provide for payment of one hundred percent of the claim, as provided in this section. If at any time the department determines that there are insufficient moneys to make payment of all claims, the department shall pay claims according to the date that the claims are received by the department. To the extent that a claim cannot be fully satisfied, the department shall order that the unpaid portion of the payment be deferred until the claim can be satisfied. However, the department shall not satisfy claims from moneys dedicated for the administration of the fund.

4. In the event of payment of a claim under this section, the fund is subrogated to the extent of the amount of the payment to all rights, powers, privileges, and remedies of the county regarding the payment amount. The county shall render all necessary assistance to the department in securing the rights granted in this section. A case or proceeding initiated by a county which involves a claim submitted to the department shall not be compromised or settled without the consent of the department. A county shall not be eligible to submit a claim to the department if the county has compromised or settled a case or proceeding, without the consent of the department.

5. If upon disposition of the real estate the county realizes an amount which exceeds the total amount of the delinquent real estate taxes, the county shall forward to the fund any excess amount which is not more than the amount expended by the fund to pay the claim by the county.

95 Acts, ch 195, §7
NEW section

204.5 Site cleanup.

A county which has acquired real estate containing a confinement feeding operation structure, as de-

fined in section 455B.161, following the nonpayment of taxes pursuant to section 446.19, may clean up the site, including removing and disposing of manure at any time. The county may seek reimbursement including by bringing an action for the costs of the removal and disposal from the person abandoning the real estate.

A person cleaning up a site located on real estate acquired by a county may dispose of any building or equipment used in the confinement feeding operation located on the land according to rules adopted by the department of natural resources pursuant to chapter 17A, which apply to the disposal of farm buildings or equipment by an individual or business organization.

95 Acts, ch 195, §8
NEW section

204.6 No state obligation.

This chapter does not imply any guarantee or obligation on the part of this state, or any of its agencies, employees, or officials, either elective or appointive, with respect to any agreement or undertaking to which this chapter relates.

95 Acts, ch 195, §9
NEW section

204.7 Departmental rules.

The department shall adopt administrative rules pursuant to chapter 17A necessary to administer this chapter.

95 Acts, ch 195, §10
NEW section

CHAPTER 206

PESTICIDES

206.2 Definitions.

When used in this chapter:

1. The term "*active ingredient*" means:

a. In the case of a pesticide other than a plant growth regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests.

b. In the case of a plant growth regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof.

c. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

d. In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

2. The term "*adulterated*" shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

3. The term "*antidote*" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

4. "*Certified applicator*" means any individual who is certified under this chapter as authorized to use any pesticide.

5. "*Certified commercial applicator*" means a pesticide applicator or individual who applies or uses a pesticide or device on any property of another for compensation.

6. "*Certified private applicator*" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use on property owned or rented by the applicator or the applicator's employer or, if applied without compen-

sation other than trading of personal services between producers of agricultural commodities, on the property of another person.

7. "*Chlordane*" means 1,2,4,5,6,7,8,8-octachloro-4,7-methano-3a,4,7,7a-tetrahydroindane; Octa klor: 1068; Velsicol 1068; Dowklor.

8. "*Commercial applicator*" means a person, corporation, or employee of a person or corporation who enters into a contract or an agreement for the sake of monetary payment and agrees to perform a service by applying a pesticide but does not include a farmer trading work with another, a person employed by a farmer not solely as a pesticide applicator who applies pesticide as an incidental part of the person's general duties, or a person who applies pesticide as an incidental part of a custom farming operation.

9. The term "*device*" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects, birds, or rodents or destroying, repelling, or mitigating fungi, nematodes, weeds or such other pests as may be designated by the secretary, but not including equipment used for the application of pesticides when sold separately therefrom.

10. The term "*distribute*" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

11. The term "*hazard*" means a probability that a given pesticide will have an adverse effect on man or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

12. The term "*inert ingredient*" means an ingredient which is not an active ingredient.

13. The term "*ingredient statement*" means either:
a. A statement of the name and percentage by weight of each active ingredient, together with the

total percentage of the inert ingredients, in the pesticide.

b. When the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic.

14. The term "*label*" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide or device.

15. The term "*labeling*" means all labels and other written, printed or graphic matter:

a. Upon the pesticide or device or any of its containers or wrappers.

b. Accompanying the pesticide or device at any time.

c. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States department of agriculture or interior, the United States public health service, the state agricultural experiment stations, the Iowa state university, the Iowa department of public health, the department of natural resources, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

16. The term "*misbranded*" shall apply:

a. To any pesticide or device if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

b. To any pesticide:

(1) If it is an imitation of or is offered for sale under the name of another pesticide.

(2) If its labeling bears any reference to registration under this chapter, when not so registered.

(3) If the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public.

(4) If the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living persons and other vertebrate animals.

(5) If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there is to be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase.

(6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness as compared with other words, statements, designs, or graphic matter in the labeling and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(7) If in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living persons or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such pesticide.

(8) If in the case of a plant growth regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticide; provided, that physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant growth regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

17. The term "*permit*" means a written certificate, issued by the secretary or the secretary's agent under rules adopted by the department authorizing the use of certain state restricted use pesticides.

18. The term "*person*" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

19. The term "*pesticide*" shall mean (a) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating directly or indirectly any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living persons, which the secretary shall declare to be a pest, and (b) any substances intended for use as a plant growth regulator, defoliant, or desiccant.

20. The term "*pesticide dealer*" means any person who distributes restricted use pesticides; pesticide for use by commercial or public pesticide applicators; or general use pesticides labeled for agricultural or lawn and garden use with the exception of dealers whose gross annual pesticide sales are less than ten thousand dollars for each business location owned or operated by the dealer.

21. The term "*plant growth regulator*" means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

22. "*Poison control center*" means an entity existing as part of a hospital licensed under chapter 135B which is an institutional member of the American association of poison control centers.

23. "*Public applicator*" means an individual who applies pesticides as an employee of a state agency, county, municipal corporation, or other governmental agency. This term does not include employees who work only under the direct supervision of a public applicator.

24. The term "*registrant*" means the person registering any pesticide or device or who has obtained a certificate of license from the department pursuant to the provisions of this chapter.

25. The term “*restricted use pesticide*” means any pesticide restricted as to use by rule of the secretary as adopted under section 206.20.

26. “*State restricted use pesticide*” means a pesticide which is restricted for sale, use, or distribution under section 455B.491.

27. “*Toxic to humans*” means not generally recognized as safe as provided by the United States food and drug administration pursuant to 21 C.F.R. pt. 182.

28. The term “*under the direct supervision of*” means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator or a state licensed commercial applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

29. The term “*unreasonable adverse effects on the environment*” means any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

95 Acts, ch 172, §1
Former subsection 7 stricken and former subsections 8–30 renumbered as 7–29

206.5 Certification requirements — rules.

1. A commercial or public applicator shall not apply any pesticide and a person shall not apply any restricted use pesticide without first complying with the certification requirements of this chapter and such other restrictions as determined by the secretary.

2. The secretary shall adopt, by rule, requirements for the examination, reexamination, and certification of applicants.

3. *a.* A commercial applicator shall choose between a one-year certification for which the applicator shall pay a thirty dollar fee or a three-year certification for which the applicator shall pay a seventy-five dollar fee. A public applicator shall choose between a one-year certification for which the applicator shall pay a ten dollar fee or a three-year certification for which the applicator shall pay a fifteen dollar fee. A private applicator shall pay a fifteen dollar fee for a three-year certification.

b. To be initially certified as a commercial, public, or private applicator, a person must complete an educational program which shall consist of an examination required to be passed by the person. After initial certification the commercial, public, or private applicator must renew the certification by completing the educational program which shall consist of either an examination or continuing instructional courses. The commercial, public, or private applicator must pass the examination each third year following initial certification or may elect to attend two hours of continuing instructional courses each year.

The department shall adopt rules providing for the program requirements which shall at least include the safe handling, application, and storage of pesticides, the correct calibration of equipment used for

the application of pesticides, and the effects of pesticides upon the groundwater. The department shall adopt by rule criteria for allowing a person required to be certified to complete either a written or oral examination. The department shall administer the instructional courses, by either teaching the courses or selecting persons to teach the courses, according to criteria as provided by rules adopted by the department. The department shall, to the extent possible, select persons to teach the courses in each county. The department is not required to compensate persons selected to teach the courses. In selecting persons, the department shall rely upon organizations interested in the application of pesticides, including associations representing pesticide applicators and associations representing agricultural producers. The Iowa cooperative extension service in agriculture and home economics of Iowa state university of science and technology shall cooperate with the department in administering the instructional courses. The Iowa cooperative extension service may teach courses, train persons selected to teach courses, or distribute informational materials to persons teaching the courses.

c. A commercial, public, or private applicator is not required to be certified to apply pesticides for a period of twenty-one days from the date of initial employment if the commercial, public, or private applicator is under the direct supervision of a certified applicator. For the purposes of this section, “*under the direct supervision of*” means that the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is physically present, by being in sight or hearing distance of the supervised person.

4. A commercial applicator who applies pesticides to agricultural land may, in lieu of the requirement of direct supervision, elect to be exempt from the certification requirements for a commercial applicator for a period of twenty-one days, if the applicator meets the requirements of a private applicator.

5. A person employed by a farmer not solely as a pesticide applicator who applies restricted use pesticides as an incidental part of the person’s general duties or a person who applies restricted use pesticides as an incidental part of a custom farming operation is required to meet the certification requirements of a private applicator.

6. An employee of a food processing and distribution establishment is exempt from the certification requirements of this section provided that at least one person holding a supervisory position is certified and provided that the employer provides a program, approved by the department, for training, testing, and certification of personnel who apply, as an incidental part of their duties, any pesticide on property owned or rented by the employer. The secretary shall adopt rules to administer the provisions of this paragraph.

7. The secretary may adopt rules to provide for license and certification adjustments, including fees, which may be necessary to provide for an equitable

transition for licenses and certifications issued prior to January 1, 1989. The rules shall also include a provision for renewal of certification and for a thirty-day renewal grace period. The secretary shall also adopt rules which allow for an exemption from certification for a person who uses certain services and is not solely a pesticide applicator, but who uses the services as an incidental part of the person's duties.

95 Acts, ch 172, §2

Former subsection 6 stricken and former subsections 7 and 8 renumbered as 6 and 7

206.19 Rules.

The department shall, by rule, after public hearing following due notice:

1. Declare as a pest any form of plant or animal life or virus which is unduly injurious to plants, humans, domestic animals, articles, or substances.
2. Determine the proper use of pesticides including but not limited to their formulations, times and methods of application, and other conditions of use.
3. Determine in cooperation with municipalities, the proper notice to be given by a commercial or public applicator to occupants of adjoining properties in urban areas prior to or after the exterior application of pesticides, and establish a schedule to determine the periods of application least harmful to living beings. The rules shall provide that a commercial or public applicator must provide notice only if an occupant requests that the commercial or public applicator provide the occupant notice in a timely manner prior to the application. The request shall include the name and address of the occupant, a telephone number of a location where the occupant may be contacted during normal business hours and evening hours, and the address of each property that adjoins the occupant's property. The notification shall expire on December 31 of each year, or the date when the occupant no longer occupies the property, whichever is earlier. Municipalities shall cooperate with the department by reporting infractions and in implementing this subsection.
4. Adopt rules providing guidelines for public bodies to notify adjacent property occupants regarding the application of herbicides to noxious weeds or other undesirable vegetation within highway rights-of-way.
5. Establish, assess, and collect civil penalties for violations by commercial applicators. In determining

the amount of the civil penalty, the department shall consider all of the following factors:

- a. The willfulness of the violation.
- b. The actual or potential danger of injury to the public health or safety, or damage to the environment caused by the violation.
- c. The actual or potential cost of the injury or damage caused by the violation to the public health or safety, or to the environment.
- d. The actual or potential cost incurred by the department in enforcing this chapter and rules adopted pursuant to this chapter against the violator.
- e. The remedial action required of the violator.
- f. The violator's previous history of complying with orders or decisions of the department.

The amount of the civil penalty shall not exceed five hundred dollars for each offense.

95 Acts, ch 172, §3

Subsection 3 amended

206.22 Penalties.

1. Any person violating section 206.11, subsection 1, paragraph "a", shall be guilty of a simple misdemeanor.
2. Any person violating any provision of this chapter other than section 206.11, subsection 1, paragraph "a", shall be guilty of a serious misdemeanor; provided, that any offense committed more than five years after a previous conviction shall be considered a first offense; and provided, further, that in any case where a registrant was issued a warning by the secretary pursuant to the provisions of this chapter, such registrant shall upon conviction of a violation of any provision of this chapter other than section 206.11, subsection 1, paragraph "a", be guilty of a serious misdemeanor; and the registration of the article with reference to which the violation occurred shall terminate automatically. An article, the registration of which has been terminated, may not again be registered unless the article, its labeling, and other material required to be submitted appear to the secretary to comply with all the requirements of this chapter.
3. Notwithstanding any other provisions of the section, in case any person, with intent to defraud, uses or reveals information relative to formulae of products acquired under authority of section 206.12, the person shall be guilty of a serious misdemeanor.

95 Acts, ch 172, §4

Subsection 4 stricken

CHAPTER 206A

CHEMIGATION

Repealed by 95 Acts, ch 172, §5

CHAPTER 215A

MOISTURE-MEASURING DEVICES

215A.3 Rules adopted — hearing.

The department is charged with the enforcement of this chapter and, after due publicity and due public hearing, is empowered to establish rules, regulations, specifications, standards, and tests as necessary in order to secure the efficient administration of this chapter. Publicity concerning the public hearing shall be reasonably calculated to give interested parties adequate notice and adequate opportunity to be heard. In establishing such rules, regulations, specifications, standards, and tests the department may use the specifications and tolerances established in

section 215.18, and shall use the specifications and tolerances established by the United States department of agriculture as of November 15, 1971, in chapter XII of GR instruction 916-6, equipment manual, used by the United States department of agriculture grain inspection, packers and stockyards administration. The department may from time to time publish such data in connection with the administration of this chapter as may be of public interest.

95 Acts, ch 216, §25
References to federal agency updated

CHAPTER 216

CIVIL RIGHTS COMMISSION

216.2 Definitions.

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

1. “*Commission*” means the Iowa state civil rights commission created by this chapter.

2. “*Commissioner*” means a member of the commission.

3. “*Court*” means the district court in and for any judicial district of the state of Iowa or any judge of the court if the court is not in session at that time.

4. “*Covered multifamily dwelling*” means any of the following:

a. A building consisting of four or more dwelling units if the building has one or more elevators.

b. The ground floor units of a building consisting of four or more dwelling units.

5. “*Disability*” means the physical or mental condition of a person which constitutes a substantial handicap, and the condition of a person with a positive human immunodeficiency virus test result, a diagnosis of acquired immune deficiency syndrome, a diagnosis of acquired immune deficiency syndrome-related complex, or any other condition related to acquired immune deficiency syndrome. The inclusion of a condition related to a positive human immunodeficiency virus test result in the meaning of “*disability*” under the provisions of this chapter does not preclude the application of the provisions of this chapter to conditions resulting from other contagious or infectious diseases.

6. “*Employee*” means any person employed by an employer.

7. “*Employer*” means the state of Iowa or any political subdivision, board, commission, department, institution, or school district thereof, and every other person employing employees within the state.

8. “*Employment agency*” means any person un-

dertaking to procure employees or opportunities to work for any other person or any person holding itself to be equipped to do so.

9. “*Familial status*” means one or more individuals under the age of eighteen domiciled with one of the following:

a. A parent or another person having legal custody of the individual or individuals.

b. The designee of the parent or the other person having custody of the individual or individuals, with the written permission of the parent or other person.

c. A person who is pregnant or is in the process of securing legal custody of the individual or individuals.

“*Familial status*” also means a person who is pregnant or who is in the process of securing legal custody of an individual who has not attained the age of eighteen years.

10. “*Labor organization*” means any organization which exists for the purpose in whole or in part of collective bargaining, of dealing with employers concerning grievances, terms, or conditions of employment, or of other mutual aid or protection in connection with employment.

11. “*Person*” means one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state of Iowa and all political subdivisions and agencies thereof.

12. “*Public accommodation*” means each and every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods for a fee or charge to nonmembers of any organization or association utilizing the place, establishment, or facility, provided that any place, establishment, or facility that caters or offers services, facilities, or goods to the nonmembers gratuitously shall be deemed a public accommodation if the accommodation receives governmental support or sub-

sidy. Public accommodation shall not mean any bona fide private club or other place, establishment, or facility which is by its nature distinctly private, except when such distinctly private place, establishment, or facility caters or offers services, facilities, or goods to the nonmembers for fee or charge or gratuitously, it shall be deemed a public accommodation during such period.

"Public accommodation" includes each state and local government unit or tax-supported district of whatever kind, nature, or class that offers services, facilities, benefits, grants or goods to the public, gratuitously or otherwise. This paragraph shall not be construed by negative implication or otherwise to restrict any part or portion of the pre-existing definition of the term "public accommodation".

13. "Unfair practice" or "discriminatory practice" means those practices specified as unfair or discriminatory in sections 216.6, 216.7, 216.8, 216.8A, 216.9, 216.10, 216.11, and 216.11A.

95 Acts, ch 129, §2
Subsection 3 amended

216.5 Powers and duties.

The commission shall have the following powers and duties:

1. To prescribe the duties of a director and appoint and prescribe the duties of such investigators and other employees and agents as the commission shall deem necessary for the enforcement of this chapter.

2. To receive, investigate, mediate, and finally determine the merits of complaints alleging unfair or discriminatory practices.

3. To investigate and study the existence, character, causes, and extent of discrimination in public accommodations, employment, apprenticeship programs, on-the-job training programs, vocational schools, credit practices, and housing in this state and to attempt the elimination of such discrimination by education and conciliation.

4. To seek a temporary injunction against a respondent when it appears that a complainant may suffer irreparable injury as a result of an alleged violation of this chapter. A temporary injunction may only be issued ex parte, if the complaint filed with the commission alleges discrimination in housing. In all other cases a temporary injunction may be issued only after the respondent has been notified and afforded the opportunity to be heard.

5. To hold hearings upon any complaint made against a person, an employer, an employment agency, or a labor organization, or the employees or members thereof, to subpoena witnesses and compel their attendance at such hearings, to administer oaths and take the testimony of any person under oath, and to compel such person, employer, employment agency, or labor organization, or employees or members thereof to produce for examination any books and papers relating to any matter involved in such complaint. The commission shall issue subpoenas for witnesses in the same manner and for the

same purposes on behalf of the respondent upon the respondent's request. Such hearings may be held by the commission, by any commissioner, or by any hearing examiner appointed by the commission. If a witness either fails or refuses to obey a subpoena issued by the commission, the commission may petition the district court having jurisdiction for issuance of a subpoena and the court shall in a proper case issue the subpoena. Refusal to obey such subpoena shall be subject to punishment for contempt.

6. To issue such publications and reports of investigations and research as in the judgment of the commission shall tend to promote good will among the various racial, religious, and ethnic groups of the state and which shall tend to minimize or eliminate discrimination in public accommodations, employment, apprenticeship and on-the-job training programs, vocational schools, or housing because of race, creed, color, sex, national origin, religion, ancestry or disability.

7. To prepare and transmit to the governor and to the general assembly from time to time, but not less often than once each year, reports describing its proceedings, investigations, hearings conducted and the outcome thereof, decisions rendered, and the other work performed by the commission.

8. To make recommendations to the general assembly for such further legislation concerning discrimination because of race, creed, color, sex, national origin, religion, ancestry or disability as it may deem necessary and desirable.

9. To co-operate, within the limits of any appropriations made for its operation, with other agencies or organizations, both public and private, whose purposes are consistent with those of this chapter, and in the planning and conducting of programs designed to eliminate racial, religious, cultural, and intergroup tensions.

10. To adopt, publish, amend, and rescind regulations consistent with and necessary for the enforcement of this chapter.

11. To receive, administer, dispense and account for any funds that may be voluntarily contributed to the commission and any grants that may be awarded the commission for furthering the purposes of this chapter.

12. To defer a complaint to a local civil rights commission under commission rules promulgated pursuant to chapter 17A.

13. To issue subpoenas and order discovery as provided by this section in aid of investigations and hearings of alleged unfair or discriminatory housing or real property practices. The subpoenas and discovery may be ordered to the same extent and are subject to the same limitations as subpoenas and discovery in a civil action in district court.

14. To defer proceedings and refer a complaint to a local commission that has been recognized by the United States department of housing and urban development as having adopted ordinances providing fair housing rights and remedies that are substantially equivalent to those granted under federal law.

15. To utilize volunteers to aid in the conduct of the commission's business including case processing functions such as intake, screening, investigation, and mediation.

95 Acts, ch 129, §3, 4
Subsection 2 amended
NEW subsection 15

216.12 Exceptions.

The provisions of sections 216.8 and 216.8A shall not apply to:

1. Any bona fide religious institution with respect to any qualifications it may impose based on religion, when the qualifications are related to a bona fide religious purpose unless the religious institution owns or operates property for a commercial purpose or membership in the religion is restricted on account of race, color, or national origin.

2. The rental or leasing of a dwelling in a building which contains housing accommodations for not more than two families living independently of each other, if the owner resides in one of the housing accommodations.

3. The rental or leasing of less than four rooms within a single dwelling by the occupant or owner of the dwelling, if the occupant or owner resides in the dwelling.

4. Discrimination on the basis of familial status involving dwellings provided under any state or federal program specifically designed and operated to assist elderly persons, as defined in the state or federal program that the commission determines to be consistent with determinations made by the United States secretary of housing and urban development, and housing for older persons. As used in this subsection, "*housing for older persons*" means housing communities consisting of dwellings intended for either of the following:

a. For eighty percent occupancy by at least one person fifty-five years of age or older per unit, and providing significant facilities and services specifically designed to meet the physical or social needs of the persons and the housing facility must publish and adhere to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

b. For and occupied solely by persons sixty-two years of age or older.

5. The rental or leasing of a housing accommodation in a building which contains housing accommodations for not more than four families living independently of each other, if the owner resides in one of the housing accommodations for which the owner qualifies for the homestead tax credit under section 425.1.

6. Discrimination on the basis of sex involving the rental, leasing, or subleasing of a dwelling within which residents of both sexes would be forced to share a living area.

The exceptions to the requirements of sections 216.8 and 216.8A provided for dwellings specified in

subsections 2, 3, and 5 do not apply to advertising related to those dwellings.

95 Acts, ch 129, §5-7
Subsection 4, unnumbered paragraph 1 amended
NEW subsection 6
Unnumbered paragraph 2 amended

216.15 Complaint — hearing.

1. Any person claiming to be aggrieved by a discriminatory or unfair practice may, in person or by an attorney, make, sign, and file with the commission a verified, written complaint which shall state the name and address of the person, employer, employment agency, or labor organization alleged to have committed the discriminatory or unfair practice of which complained, shall set forth the particulars thereof, and shall contain such other information as may be required by the commission. The commission, a commissioner, or the attorney general may in like manner make, sign, and file such complaint.

2. Any place of public accommodation, employer, labor organization, or other person who has any employees or members who refuse or threaten to refuse to comply with the provisions of this chapter may file with the commission a verified written complaint in triplicate asking the commission for assistance to obtain their compliance by conciliation or other remedial action.

3. a. After the filing of a verified complaint, a true copy shall be served within twenty days by certified mail on the person against whom the complaint is filed. An authorized member of the commission staff shall make a prompt investigation and shall issue a recommendation to an administrative law judge under the jurisdiction of the commission, who shall then issue a determination of probable cause or no probable cause.

b. For purposes of this chapter, an administrative law judge issuing a determination of probable cause or no probable cause under this section is exempt from section 17A.17.

c. If the administrative law judge concurs with the investigating official that probable cause exists regarding the allegations of the complaint, the staff of the commission shall promptly endeavor to eliminate the discriminatory or unfair practice by conference, conciliation, and persuasion. If the administrative law judge finds that no probable cause exists, the administrative law judge shall issue a final order dismissing the complaint and shall promptly mail a copy to the complainant and to the respondent by certified mail. A finding of probable cause shall not be introduced into evidence in an action brought under section 216.16.

d. The commission staff must endeavor to eliminate the discriminatory or unfair practice by conference, conciliation, and persuasion for a period of thirty days following the initial conciliation meeting between the respondent and the commission staff after a finding of probable cause. After the expiration of thirty days, the director may order the conciliation conference and persuasion procedure provided in this section to be bypassed when the director determines

the procedure is unworkable by reason of past patterns and practices of the respondent, or a statement by the respondent that the respondent is unwilling to continue with the conciliation. The director must have the approval of a commissioner before bypassing the conciliation, conference and persuasion procedure. Upon the bypassing of conciliation, the director shall state in writing the reasons for bypassing.

4. The members of the commission and its staff shall not disclose the filing of a complaint, the information gathered during the investigation, or the endeavors to eliminate such discriminatory or unfair practice by mediation, conference, conciliation, and persuasion, unless such disclosure is made in connection with the conduct of such investigation.

5. When the director is satisfied that further endeavor to settle a complaint by conference, conciliation, and persuasion is unworkable and should be bypassed, and the thirty-day period provided for in subsection 3 has expired without agreement, the director with the approval of a commissioner, shall issue and cause to be served a written notice specifying the charges in the complaint as they may have been amended and the reasons for bypassing conciliation, if the conciliation is bypassed, and requiring the respondent to answer the charges of the complaint at a hearing before the commission, a commissioner, or a person designated by the commission to conduct the hearing, hereafter referred to as the administrative law judge, and at a time and place to be specified in the notice.

6. The case in support of such complaint shall be presented at the hearing by one of the commission's attorneys or agents. The investigating official shall not participate in the hearing except as a witness nor participate in the deliberations of the commission in such case.

7. The hearing shall be conducted in accordance with the provisions of chapter 17A for contested cases. The burden of proof in such a hearing shall be on the commission.

8. If upon taking into consideration all of the evidence at a hearing, the commission determines that the respondent has engaged in a discriminatory or unfair practice, the commission shall state its findings of fact and conclusions of law and shall issue an order requiring the respondent to cease and desist from the discriminatory or unfair practice and to take the necessary remedial action as in the judgment of the commission will carry out the purposes of this chapter. A copy of the order shall be delivered to the respondent, the complainant, and to any other public officers and persons as the commission deems proper.

a. For the purposes of this subsection and pursuant to the provisions of this chapter "remedial action" includes but is not limited to the following:

(1) Hiring, reinstatement or upgrading of employees with or without pay. Interim earned income and unemployment compensation shall operate to reduce the pay otherwise allowable.

(2) Admission or restoration of individuals to a labor organization, admission to or participation in a

guidance program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, with the utilization of objective criteria in the admission of individuals to such programs.

(3) Admission of individuals to a public accommodation or an educational institution.

(4) Sale, exchange, lease, rental, assignment or sublease of real property to an individual.

(5) Extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent denied to the complainant because of the discriminatory or unfair practice.

(6) Reporting as to the manner of compliance.

(7) Posting notices in conspicuous places in the respondent's place of business in form prescribed by the commission and inclusion of notices in advertising material.

(8) Payment to the complainant of damages for an injury caused by the discriminatory or unfair practice which damages shall include but are not limited to actual damages, court costs and reasonable attorney fees.

b. In addition to the remedies provided in the preceding provisions of this subsection, the commission may issue an order requiring the respondent to cease and desist from the discriminatory or unfair practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this chapter as follows:

(1) In the case of a respondent operating by virtue of a license issued by the state or a political subdivision or agency, if the commission, upon notice to the respondent with an opportunity to be heard, determines that the respondent has engaged in a discriminatory or unfair practice and that the practice was authorized, requested, commanded, performed or knowingly or recklessly tolerated by the board of directors of the respondent or by an officer or executive agent acting within the scope of the officer's or agent's employment, the commission shall so certify to the licensing agency. Unless the commission finding of a discriminatory or unfair practice is reversed in the course of judicial review, the finding of discrimination is binding on the licensing agency. If a certification is made pursuant to this subsection, the licensing agency may initiate licensee disciplinary procedures.

(2) In the case of a respondent who is found by the commission to have engaged in a discriminatory or unfair practice in the course of performing under a contract or subcontract with the state or political subdivision or agency, if the practice was authorized, requested, commanded, performed, or knowingly or recklessly tolerated by the board of directors of the respondent or by an officer or executive agent acting within the scope of the officer's or agent's employment, the commission shall so certify to the contracting agency. Unless the commission's finding of a discriminatory or unfair practice is reversed in the course of judicial review, the finding of discrimination is binding on the contracting agency.

(3) Upon receiving a certification made under this subsection, a contracting agency may take appropriate action to terminate a contract or portion thereof previously entered into with the respondent, either absolutely or on condition that the respondent carry out a program of compliance with the provisions of this chapter; and assist the state and all political subdivisions and agencies thereof to refrain from entering into further contracts.

c. The election of an affirmative order under paragraph “b” of this subsection shall not bar the election of affirmative remedies provided in paragraph “a” of this subsection.

9. The terms of a conciliation or mediation agreement reached with the respondent may require the respondent to refrain in the future from committing discriminatory or unfair practices of the type stated in the agreement, to take remedial action as in the judgment of the commission will carry out the purposes of this chapter, and to consent to the entry in an appropriate district court of a consent decree embodying the terms of the conciliation or mediation agreement. Violation of such a consent decree may be punished as contempt by the court in which it is filed, upon a showing by the commission of the violation at any time within six months of its occurrence. At any time in its discretion, the commission may investigate whether the terms of the agreement are being complied with by the respondent.

Upon a finding that the terms of the conciliation or mediation agreement are not being complied with by the respondent, the commission shall take appropriate action to assure compliance.

10. If, upon taking into consideration all of the evidence at a hearing, the commission finds that a respondent has not engaged in any such discriminatory or unfair practice, the commission shall issue an order denying relief and stating the findings of fact and conclusions of the commission, and shall cause a copy of the order dismissing the complaint to be served by certified mail on the complainant and the respondent.

11. The commission shall establish rules to govern, expedite, and effectuate the procedures established by this chapter and its own actions thereunder.

12. A claim under this chapter shall not be maintained unless a complaint is filed with the commission within one hundred eighty days after the alleged discriminatory or unfair practice occurred.

13. The commission or a party to a complaint may request mediation of the complaint at any time during the commission’s processing of the complaint. If the complainant and respondent participate in mediation, any mediation agreement may be enforced pursuant to this section. Mediation may be discontinued at the request of any party or the commission.

95 Acts, ch 129, §§8–11
Subsections 1, 4, and 9 amended
NEW subsection 13

216.15B Mediation — confidentiality.

1. For the purposes of this section, “mediator” shall be the person designated in writing by the

commission to conduct mediation of a complaint filed under this chapter. The written designation must specifically refer to this section.

2. All verbal or written information relating to the subject matter of a mediation agreement and transmitted between either the complainant or the respondent and a mediator to resolve a complaint filed under this chapter, whether reflected in notes, memoranda, or other work products, is a confidential communication except as otherwise expressly provided in this chapter. Mediators involved in a mediation under this section shall not be examined in any judicial or administrative proceeding regarding the confidential communications and are not subject to judicial or administrative process requiring the disclosure of the confidential communications. If a written confidential communication is kept by the mediator it must be kept in a mediation file which is maintained separately from the case file. The confidential communications may not be included in the commission’s case file unless the person providing the information consents to its inclusion in the case file. The mediation file is not part of the file made available to the parties upon the commission’s receipt of a right to sue letter. Information maintained in the mediation file and not included in the case file shall not be considered when making a recommendation or decision regarding screening, probable cause, or any issue in a contested case.

3. A mediator who has reason to believe that a complainant or respondent has given perjured evidence concerning a confidential communication is not barred by this section from disclosing the basis for this belief to any party to a cause in which the alleged perjury occurs or to the appropriate authorities, including testifying concerning the relevant confidential communications. If a dispute regarding the existence of a mediation agreement exists, the terms of the mediation agreement, or the conduct of the mediation process itself, the mediator may be examined regarding relevant confidential communications.

95 Acts, ch 129, §12
NEW section

216.16A Civil action elected — housing.

1. a. A complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the charges asserted in the complaint decided in a civil action as provided by section 216.17A.

b. The election must be made not later than twenty days after the date of receipt by the electing person of service under section 216.15A, subsection 5, or in the case of the commission, not later than twenty days after the date the determination was issued.

c. The person making the election shall give notice to the commission and to all other complainants and respondents to whom the election relates.

d. The election to have the charges of a complaint decided in a civil action as provided in paragraph “a” is only available if one of the following is alleged:

(1) It is alleged that there has been a violation of section 216.8 or 216.8A.

(2) It is alleged that there has been a violation of section 216.11 or 216.11A arising out of an alleged violation of the prohibitions contained in section 216.8 or 216.8A.

2. *a.* An aggrieved person may file a civil action in district court not later than two years after the occurrence of the termination of an alleged discriminatory housing or real estate practice, or the breach of a mediation agreement entered into under this chapter, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing or real estate practice or breach.

b. The two-year period does not include any time during which an administrative hearing under this chapter is pending with respect to a complaint or charge based on the discriminatory housing or real estate practice. This subsection does not apply to actions arising from a breach of a mediation agreement.

c. An aggrieved person may file an action under this subsection whether or not a discriminatory housing or real estate complaint has been filed under section 216.15, and without regard to the status of any discriminatory housing or real estate complaint filed under that section.

d. If the commission has obtained a mediation agreement with the consent of an aggrieved person, the aggrieved person shall not file an action under this subsection with respect to the alleged discriminatory practice that forms the basis for the complaint except to enforce the terms of the agreement.

e. An aggrieved person shall not file an action under this subsection with respect to an alleged discriminatory housing or real estate practice that forms the basis of a charge issued by the commission if the commission has begun a hearing on the record under this chapter with respect to the charge.

f. In an action filed in district court under this subsection, the court may, upon a finding of discrimination, order any of the remedies provided for in section 216.17A, subsection 6.

95 Acts, ch 129, §13, 14

Subsection 2, paragraphs c, d, and e amended

Subsection 2, NEW paragraph f

216.17A Civil proceedings — housing.

1. *a.* If timely election is made under section 216.16A, subsection 1, the commission shall authorize, and not later than thirty days after the election is made, the attorney general shall file a civil action on behalf of the aggrieved person in a district court seeking relief.

b. Venue for an action under this section is in the county in which the respondent resides or has its principal place of business, or in the county in which the alleged discriminatory housing or real estate practice occurred.

c. An aggrieved person may intervene in the action.

d. If the district court finds that a discriminatory housing or real estate practice has occurred or is about to occur, the district court may grant as relief any relief that a court may grant in a civil action under subsection 6.

e. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the district court shall not award the monetary relief if that aggrieved person has not complied with discovery orders entered by the district court.

2. A commission order under section 216.15A, subsection 11, and a commission order that has been substantially affirmed by judicial review, do not affect a contract, sale, encumbrance, or lease that was consummated before the commission issued the order and involved a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the charge issued under this chapter.

3. If the commission issues an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the commission, not later than thirty days after the date of issuance of the order, shall do all of the following:

a. Send copies of the findings and the order to the governmental agency.

b. Recommend to the governmental agency appropriate disciplinary action.

4. If the commission issues an order against a respondent against whom another order was issued within the preceding five years under section 216.15A, subsection 11, the commission shall send a copy of each order issued under that section to the attorney general.

5. On application by a person alleging a discriminatory housing practice or by a person against whom a discriminatory practice is alleged, the district court may appoint an attorney for the person.

6. In an action under subsection 1 and section 216.16A, subsection 2, if the district court finds that a discriminatory housing or real estate practice has occurred or is about to occur, the district court may award or issue to the plaintiff one or more of the following:

a. Actual and punitive damages.

b. Reasonable attorney's fees.

c. Court costs.

d. Subject to subsection 7, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the practice or ordering appropriate affirmative action.

7. Relief granted under this section does not affect a contract, sale, encumbrance, or lease that was consummated before the granting of the relief and involved a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the filing of a complaint under this chapter or a civil action under this section.

8. *a.* On the request of the commission, the attorney general may intervene in an action under section 216.16A, subsection 2, if the commission certifies that the case is of general public importance.

b. The attorney general may obtain the same relief available to the attorney general under subsection 9.

9. *a.* On the request of the commission, the attorney general may file a civil action in district court

for appropriate relief if the commission has reasonable cause to believe that any of the following applies:

(1) A person is engaged in a pattern or practice of resistance to the full enjoyment of any housing right granted by this chapter.

(2) A person has been denied any housing right granted by this chapter and that denial raises an issue of general public importance.

b. In an action under this subsection and subsection 8, the district court may do any of the following:

(1) Order preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of housing rights as necessary to assure the full enjoyment of the housing rights granted by this chapter.

(2) Order another appropriate relief, including the awarding of monetary damages, reasonable attorney's fees, and court costs.

(3) To vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed any of the following:

(a) Fifty thousand dollars for a first violation.

(b) One hundred thousand dollars for a second or subsequent violation.

c. A person may intervene in an action under this section if the person is any of the following:

(1) An aggrieved person to the discriminatory housing or real estate practice.

(2) A party to a mediation agreement concerning the discriminatory housing or real estate practice.

10. The attorney general, on behalf of the commission or other party at whose request a subpoena is issued, may enforce the subpoena in appropriate proceedings in district court.

11. A court in a civil action brought under this section or the commission in an administrative hearing under section 216.15A, subsection 11, may award reasonable attorney's fees to the prevailing party and assess court costs against the nonprevailing party.

95 Acts, ch 129, §15-17

Subsection 6, unnumbered paragraph 1 amended

Subsection 8, paragraph a amended

Subsection 9, paragraph b, unnumbered paragraph 1 amended

CHAPTER 216A

DEPARTMENT OF HUMAN RIGHTS

Intermediate criminal sanctions task force; duties of division of criminal and juvenile justice planning; 93 Acts, ch 171, §6, 11; 94 Acts, ch 1196, §23; 95 Acts, ch 207, §28, 30

216A.2 Appointment of department director and administrators.

The governor shall appoint a director of the department of human rights, subject to confirmation by the senate. The department director shall serve at the pleasure of the governor. The department director shall:

1. Establish general operating policies for the department to provide general uniformity among the divisions while providing for necessary flexibility.

2. Receive budgets submitted by each commission and reconcile the budgets among the divisions. The department director shall submit a budget for the department, subject to the budget requirements pursuant to chapter 8.

3. Coordinate and supervise personnel services and shared administrative support services to assure maximum support and assistance to the divisions.

4. Identify and, with the chief administrative officers of each division, facilitate the opportunities for consolidation and efficiencies within the department.

5. In cooperation with the commissions, make recommendations to the governor regarding the appointment of the administrator of each division.

6. Serve as an ex officio member of all commissions or councils within the department.

7. Serve as chairperson of the human rights administrative-coordinating council.

8. Evaluate each administrator, after receiving recommendations from the appropriate commissions or councils, and submit a written report of the completed evaluations to the governor and the appropriate commissions or councils, annually.

9. Administer the division of persons with disabilities.

The governor shall appoint the administrators of each of the divisions, except for the division of persons with disabilities, subject to confirmation by the senate. Each administrator shall serve at the pleasure of the governor and is exempt from the merit system provisions of chapter 19A. The governor shall set the salary of the division administrators within the ranges set by the general assembly.

95 Acts, ch 212, §9

Section amended

216A.71 Definitions.

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

1. "Administrator" means the administrator of the department of human rights.

2. "Commission" means the commission of persons with disabilities.

3. "Division" means the division of persons with disabilities of the department of human rights.

95 Acts, ch 212, §10

Subsection 1 amended

216A.112 Commission created.

A commission on the deaf is established, consisting of seven members appointed by the governor, subject to confirmation by the senate. Lists of nominees for appointment to membership on the commission may be submitted by the Iowa association of the deaf, the Iowa state registry of interpreters for the deaf, the Iowa school for the deaf, and the commission of persons with disabilities. At least four members shall be persons who are deaf and who cannot hear human speech with or without use of amplification and at least one member who is hard of hearing. All members shall reside in Iowa. The members of the commission shall appoint the chairperson of the commission. A majority of the members of the commission constitutes a quorum.

Terms of office are three years and shall begin and end pursuant to section 69.19. The commission shall adopt rules concerning programs and services for deaf and hard-of-hearing persons.

Commission members shall be reimbursed for actual expenses incurred in performance of their duties. Members may also be eligible to receive compensation as provided in section 7E.6.

95 Acts, ch 212, §11
Unnumbered paragraph 1 amended

216A.143 Meetings of the commission.

The commission shall meet at least once each quarter and may hold special meetings on the call of the chairperson. The commission may adopt rules pursuant to chapter 17A as it deems necessary for the conduct of its business. The members of the commission shall be reimbursed for actual expenses while engaged in their official duties. Members may also be eligible to receive compensation as provided in section 7E.6.

95 Acts, ch 69, §1
Section amended

CHAPTER 216B**DEPARTMENT FOR THE BLIND****216B.3 Commission duties.**

The commission shall:

1. Prepare and maintain a complete register of the blind of the state which shall describe the condition, cause of blindness, ability to receive education and industrial training, and other facts the commission deems of value.
2. Assist in marketing of products of blind workers of the state.
3. Ameliorate the condition of the blind by promoting visits to them in their homes for the purpose of instruction and by other lawful methods as the commission deems expedient.
4. Make inquiries concerning the causes of blindness to ascertain what portion of cases are preventable, and cooperate with the other organized agents of the state in the adoption and enforcement of proper preventive measures.
5. Provide for suitable vocational training if the commission deems it advisable and necessary. The commission may establish workshops for the employment of the blind, paying suitable wages for work under the employment. The commission may provide or pay for, during their training period, the temporary lodging and support of persons receiving vocational training. The commission may use receipts or earnings that accrue from the operation of workshops as provided in this chapter, but a detailed statement of receipts or earnings and expenditures shall be made monthly to the director of the department of management.
6. Establish, manage, and control a special training, orientation, and adjustment center or centers for the blind. Training in the centers shall be limited to persons who are sixteen years of age or older, and the

department shall not provide or cause to be provided any academic education or training to children under the age of sixteen except that the commission may provide library services to these children. The commission may provide for the maintenance, upkeep, repair, and alteration of the buildings and grounds designated as centers for the blind including the expenditure of funds appropriated for that purpose. Nonresidents may be admitted to Iowa centers for the blind as space is available, upon terms determined by rule.

7. Establish and maintain offices for the department and commission.

8. Accept gifts, grants, devises, or bequests of real or personal property from any source for the use and purposes of the department. Notwithstanding sections 8.33 and 12C.7, the interest accrued from monies received under this section shall not revert to the general fund of the state.

9. Provide library services to blind and physically handicapped persons.

10. Act as a bureau of information and industrial aid for the blind, such as assisting the blind in finding employment.

11. Be responsible for the budgetary and personnel decisions for the department and commission.

12. Manage and control the property, both real and personal, belonging to the department. The commission shall, according to the schedule established in this subsection, when the price is reasonably competitive and the quality as intended, purchase soybean-based inks and plastic products with recycled content, including but not limited to plastic garbage can liners. For purposes of this subsection, "recycled content" means that the content of the product contains a minimum of thirty percent postconsumer material.

a. By July 1, 1991, one hundred percent of the purchases of inks which are used for newsprint paper for printing services performed internally or contracted for by the commission shall be soybean-based.

b. By July 1, 1995, a minimum of ten percent of the purchases of garbage can liners made by the commission shall be plastic garbage can liners with recycled content. The percentage purchased shall increase by ten percent annually until fifty percent of the purchases of garbage can liners are plastic garbage can liners with recycled content.

c. By July 1, 1993, one hundred percent of the purchases of inks, other than inks which are used for newsprint printing services, and which are used internally or contracted for by the commission, shall be soybean-based to the extent formulations for such inks are available.

d. The commission shall report to the general assembly on February 1 of each year, the following:

(1) A listing of plastic products which are regularly purchased by the commission for which recycled content product alternatives are available, including the cost of the plastic products purchased and the cost of the recycled content product alternatives.

(2) Information relating to soybean-based inks and plastic garbage can liners with recycled content regularly purchased by the commission, including the cost of purchasing soybean-based inks and plastic garbage can liners with recycled content and the percentages of soybean-based inks and plastic garbage can liners with recycled content that have been purchased.

e. The department of natural resources shall review the procurement specifications currently used by the commission to eliminate, wherever possible, discrimination against the procurement of products manufactured with recycled content and soybean-based inks.

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

g. The commission, in conjunction with the department of natural resources, shall adopt rules to carry out the provisions of this section.

h. The department of natural resources shall cooperate with the commission in all phases of implementing this section.

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

14. In conjunction with the recommendations made by the department of natural resources, purchase and use recycled printing and writing paper in accordance with the schedule established in section 18.18; establish a wastepaper recycling program, by January 1, 1990, in accordance with the recommendations made by the department of natural resources and requirements of section 18.20; and, in accordance with section 18.6, require product content statements, the provision of information regarding on-site review of waste management in product bidding and contract procedures, and compliance with requirements regarding contract bidding.

15. Develop a plan to provide telephone yellow pages information without charge to persons declared to be blind under the standards in section 422.12, subsection 1, paragraph "e". The department may apply for federal funds to support the service. The program shall be limited in scope by the availability of funds.

16. a. A motor vehicle purchased by the commission shall not operate on gasoline other than gasoline blended with at least ten percent ethanol. A state issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

b. Of all new passenger vehicles and light pickup trucks purchased by the commission, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion, including but not limited to any of the following:

(1) A flexible fuel which is either of the following:

(a) A fuel blended with not more than fifteen percent gasoline and at least eighty-five percent ethanol.

(b) A fuel which is a mixture of diesel fuel and processed soybean oil. At least twenty percent of the mixed fuel by volume must be processed soybean oil.

(c) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.

(2) Compressed or liquefied natural gas.

(3) Propane gas.

(4) Solar energy.

(5) Electricity.

The provisions of this paragraph "b" do not apply to vehicles and trucks purchased and directly used for law enforcement or off-road maintenance work.

17. Comply with the requirements for the purchase of lubricating oils and industrial oils as established pursuant to section 18.22.

CHAPTER 217

DEPARTMENT OF HUMAN SERVICES

Annual plan for use of federal social services block grant funds; 95 Acts, ch 208, §11
 Integrated substance abuse managed care system; appropriations; federal waiver application; 95 Acts, ch 212, §5

217.3 Duties of council.

The council of human services shall:

1. Organize annually and select a chairperson and vice chairperson.
2. Adopt and establish policy for the operation and conduct of the department of human services, subject to any guidelines which may be adopted by the general assembly, and the implementation of all services and programs thereunder.
3. Report immediately to the governor any failure by the director or any administrator of the department of human services to carry out any of the policy decisions or directives of the council.
4. Approve the budget of the department of human services prior to submission to the governor. Prior to approval of the budget, the council shall publicize and hold a public hearing to provide explanations and hear questions, opinions, and suggestions regarding the budget. Invitations to the hearing shall be extended to the governor, the governor-elect, the director of the department of management, and other persons deemed by the council as integral to the budget process.
5. Insure that all programs administered or services rendered by the department directly to any citizen or through a local board of welfare to any

citizen are co-ordinated and integrated so that any citizen does not receive a duplication of services from various departments or local agencies that could be rendered by one department or local agency. If the council finds that such is not the case, it shall hear and determine which department or local agency shall provide the needed service or services and enter an order of their determination by resolution of the council which must be concurred in by at least a majority of the members. Thereafter such order or resolution of the council shall be obeyed by all state departments and local agencies to which it is directed.

6. Adopt all necessary rules recommended by the director or administrators of divisions hereinafter established prior to their promulgation pursuant to chapter 17A.

7. Approve the establishment of any new division or reorganization, consolidation or abolition of any established division prior to the same becoming effective.

8. Recommend to the governor the names of individuals qualified for the position of director of human services when a vacancy exists in the office.

95 Acts, ch 205, §36
 Subsection 4 amended

CHAPTER 218

INSTITUTIONS GOVERNED BY HUMAN SERVICES DEPARTMENT

218.42 Wages of residents.

If a resident performs services for the state at an institution listed in section 218.1, the administrator in control of the institution shall pay the resident a wage in accordance with federal wage and hour requirements. However, the wage amount shall not exceed the amount of the prevailing wage paid in the state for a like service or its equivalent.

95 Acts, ch 82, §1
 Section amended

218.99 County auditors to be notified of patients' personal accounts.

The administrator of a division of the department of human services in control of a state institution shall direct the business manager of each institution under the administrator's jurisdiction which is mentioned in section 331.424, subsection 1, paragraphs

"a" and "b" and for which services are paid under section 331.424A to quarterly inform the auditor of the county of legal settlement of any patient or resident who has an amount in excess of two hundred dollars on account in the patients' personal deposit fund and the amount on deposit. The administrators shall direct the business manager to further notify the auditor of the county at least fifteen days before the release of funds in excess of two hundred dollars or upon the death of the patient or resident. If the patient or resident has no county of legal settlement, notice shall be made to the director of the department of human services and the administrator of the division of the department in control of the institution involved.

95 Acts, ch 206, §6
 1995 amendment effective January 1, 1996; applicability; 95 Acts, ch 206, §12
 Section amended

CHAPTER 222

PERSONS WITH MENTAL RETARDATION

222.1 Purpose of state schools.

The Glenwood state hospital-school and the Woodward state hospital-school shall be maintained for the purpose of providing treatment, training, instruction, care, habilitation, and support of persons with mental retardation or other disabilities in this state.

A special mental retardation unit may be maintained at one of the state mental health institutes for the purposes set forth in sections 222.88 to 222.91.

95 Acts, ch 82, §6
Unnumbered paragraph 1 amended

222.13 Voluntary admissions.

1. If an adult person is believed to be a person with mental retardation, the adult person or the adult person's guardian may request the county board of supervisors or their designated agent to apply to the superintendent of any state hospital-school for the voluntary admission of the adult person either as an inpatient or an outpatient of the hospital-school. After determining the legal settlement of the adult person as provided by this chapter, the board of supervisors shall, on forms prescribed by the administrator, apply to the superintendent of the hospital-school in the district for the admission of the adult person to the hospital-school. An application for admission to a special unit of any adult person believed to be in need of any of the services provided by the special unit under section 222.88 may be made in the same manner, upon request of the adult person or the adult person's guardian. The superintendent shall accept the application providing a preadmission diagnostic evaluation confirms or establishes the need for admission, except that an application may not be accepted if the institution does not have adequate facilities available or if the acceptance will result in an overcrowded condition.

2. If the hospital-school has no appropriate program for the treatment of an adult or minor person with mental retardation applying under this section or section 222.13A, the board of supervisors shall arrange for the placement of the person in any public or private facility within or without the state, approved by the director of the department of human services, which offers appropriate services for the person.

3. Upon applying for admission of an adult or minor person to a hospital-school, or a special unit, the board of supervisors shall make a full investigation into the financial circumstances of that person and those liable for that person's support under section 222.78, to determine whether or not any of them are able to pay the expenses arising out of the admission of the person to a hospital-school or special treatment unit. If the board finds that the person or those legally responsible for the person are presently unable to pay the expenses, they shall direct that the

expenses be paid by the county. The board may review its finding at any subsequent time while the person remains at the hospital-school, or is otherwise receiving care or treatment for which this chapter obligates the county to pay. If the board finds upon review that the person or those legally responsible for the person are presently able to pay the expenses, the finding shall apply only to the charges incurred during the period beginning on the date of the review and continuing thereafter, unless and until the board again changes its finding. If the board finds that the person or those legally responsible for the person are able to pay the expenses, they shall direct that the charges be so paid to the extent required by section 222.78, and the county auditor shall be responsible for the collection of the charges.

95 Acts, ch 82, §7
Section amended

222.13A Voluntary admissions — minors.

1. If a minor is believed to be a person with mental retardation, the minor's parent, guardian, or custodian may request the county board of supervisors to apply for admission of the minor as a voluntary patient in a state hospital-school. If the hospital-school does not have appropriate services for the minor's treatment, the board of supervisors may arrange for the admission of the minor in a public or private facility within or without the state, approved by the director of human services, which offers appropriate services for the minor's treatment.

2. Upon receipt of an application for voluntary admission of a minor, the board of supervisors shall provide for a preadmission diagnostic evaluation of the minor to confirm or establish the need for the admission. The preadmission diagnostic evaluation shall be performed by a person who meets the qualifications of a qualified mental retardation professional.

3. During the preadmission diagnostic evaluation, the minor shall be informed both orally and in writing that the minor has the right to object to the voluntary admission. If the preadmission diagnostic evaluation determines that the voluntary admission is appropriate but the minor objects to the admission, the minor shall not be admitted to the state hospital-school unless the court approves of the admission. A petition for approval of the minor's admission may be submitted to the juvenile court by the minor's parent, guardian, or custodian.

4. As soon as practicable after the filing of a petition for approval of the voluntary admission, the court shall determine whether the minor has an attorney to represent the minor in the proceeding. If the minor does not have an attorney, the court shall assign to the minor an attorney. If the minor is unable to pay for an attorney, the attorney shall be compen-

sated in substantially the same manner as provided in section 815.7.

5. The court shall order the admission of a minor who objects to the admission, only after a hearing in which it is shown by clear and convincing evidence that both of the following circumstances exist:

a. The minor needs and will substantially benefit from treatment or habilitation.

b. A placement which involves less restriction of the minor's liberties for the purposes of treatment or habilitation is not feasible.

95 Acts, ch 82, §8
NEW section

222.15 Discharge of patients admitted voluntarily.

This section applies to any person who was voluntarily admitted to a state hospital-school or other facility in accordance with the provisions of section 222.13 or 222.13A. Except as otherwise provided by this section, if the person or the person's parent, guardian, or custodian submits a written request for the person's release, the person shall be immediately released.

1. If the person is an adult and was admitted pursuant to an application by the person or the person's guardian and the request for release is made by a different person, the release is subject to the agreement of the person voluntarily admitted or the person's guardian, if the guardian submitted the application.

2. If the person is a minor who was admitted pursuant to the provisions of section 222.13A, the person's release prior to becoming eighteen years of age is subject to the consent of the person's parent, guardian, or custodian, or to the approval of the court if the admission was approved by the court.

3. a. If the administrator of the facility in which the patient is admitted certifies that in the administrator's opinion the release of the person would be contrary to the safety of the person or the community, the release may be postponed by a court order. The administrator's certification shall be filed with the clerk of the district court for the county in which the facility is located no later than one day following the submission of the written request for release. The period of postponement shall be the period of time the court determines necessary to permit the commencement of judicial proceedings for the person's involuntary commitment. The period of postponement shall not exceed five days unless the period of postponement is extended by court order for good cause shown.

b. If a petition for the person's involuntary commitment is timely filed, the administrator may detain the person in the facility and provide treatment until disposition of the petition. The treatment shall be limited to that necessary to preserve the person's life or to appropriately control behavior by the person which is likely to result in physical injury to the person or to others if allowed to continue. The administrator shall not otherwise provide treatment to the person without the person's consent.

95 Acts, ch 82, §9
Section amended

222.16A Judicial proceedings.

1. The chief judge of a judicial district may appoint one or more judicial hospitalization referees for each county in the district to discharge the duties imposed on the court by this chapter. The judicial hospitalization qualification provisions of section 229.21 shall apply to referees appointed under this section in performing duties pursuant to this chapter. An order or findings by a referee pursuant to this chapter may be appealed to a judge of the district court by filing notice with the clerk of the district court within seven days after the findings or order is made, and hearing by the district court shall be de novo. The court shall schedule a hearing before a district judge at the earliest practicable time.

2. The juvenile court has exclusive original jurisdiction in any court proceedings concerning a minor pursuant to this chapter.

95 Acts, ch 82, §10
NEW section

222.59 Alternative to state hospital-school placement.

1. Upon receiving a request from an authorized requester, the superintendent of a state hospital-school shall assist the requester in identifying available community-based services as an alternative to continued placement of a patient in the state hospital-school. For the purposes of this section, "authorized requester" means the parent, guardian, or custodian of a minor patient, the guardian of an adult patient, or an adult patient who does not have a guardian. The assistance shall identify alternatives to continued placement which are appropriate to the patient's needs and shall include but are not limited to any of the following:

a. Providing information on currently available services that are an alternative to residence in the state hospital-school.

b. Referring the patient to an appropriate case management agency or other provider of service.

2. If a patient was admitted pursuant to section 222.13 or section 222.13A and the patient wishes to be placed outside of the state hospital-school, the discharge for the placement shall be made in accordance with the provisions of section 222.15.

3. If a patient was involuntarily committed, a petition for approval of a proposed placement outside the state hospital-school shall be filed, by the authorized requester or the superintendent of the state hospital-school where the patient is placed, with the court which made the commitment with either of the following recommendations for the court's consideration:

a. That the patient's commitment is no longer necessary and should be discontinued.

b. That the patient's commitment is still appropriate but the patient should be transferred to another public or private facility in accordance with the provisions of section 222.31, subsection 1.

95 Acts, ch 82, §11
Section stricken and rewritten

222.60 Costs paid by county or state — diagnosis and evaluation.

All necessary and legal expenses for the cost of admission or commitment or for the treatment, training, instruction, care, habilitation, support and transportation of persons with mental retardation, as provided for in the county management plan provisions implemented pursuant to section 331.439, subsection 1, in a state hospital-school, or in a special unit, or any public or private facility within or without the state, approved by the director of the department of human services, shall be paid by either:

1. The county in which such person has legal settlement as defined in section 252.16.
2. The state when such person has no legal settlement or when such settlement is unknown.

Prior to a county of legal settlement approving the payment of expenses for a person under this section, the county may require that the person be diagnosed to determine if the person has mental retardation or that the person be evaluated to determine the appropriate level of services required to meet the person's needs relating to mental retardation. The diagnosis and the evaluation may be performed concurrently and shall be performed by an individual or individuals approved by the county who are qualified to perform the diagnosis or the evaluation. Following the initial approval for payment of expenses, the county of legal settlement may require that an evaluation be performed at reasonable time periods. The cost of a county-required diagnosis and an evaluation is at the county's expense. In the case of a person without legal settlement or whose legal settlement is unknown, the state may apply the diagnosis and evaluation provisions of this paragraph at the state's expense. A diagnosis or an evaluation under this section may be part of a county's single entry point process under section 331.440, provided that a diagnosis is performed only by an individual qualified as provided in this section.

A diagnosis of mental retardation under this section shall be made only when the onset of the person's condition was prior to the age of eighteen years and shall be based on an assessment of the person's intellectual functioning and level of adaptive skills. The diagnosis shall be made by an individual who is a psychologist or psychiatrist who is professionally trained to administer the tests required to assess intellectual functioning and to evaluate a person's adaptive skills.

A diagnosis of mental retardation shall be made in accordance with the criteria provided in the diagnostic and statistical manual of mental disorders, fourth edition, published by the American psychiatric association.

95 Acts, ch 82, §12; 95 Acts, ch 190, §1; 95 Acts, ch 206, §13
Unnumbered paragraph 1 amended
NEW unnumbered paragraphs 2-4

222.73 Billing of patient charges — computation of actual costs — cost settlement.

1. The superintendent of each hospital-school and special unit shall compute by February 1 the

average daily patient charge and outpatient treatment charges for which each county will be billed for services provided to patients chargeable to the county during the fiscal year beginning the following July 1. The department shall certify the amount of the charges to the director of revenue and finance and notify the counties of the billing charges.

a. The superintendent shall compute the average daily patient charge for a hospital-school or special unit for services provided in the following fiscal year, in accordance with generally accepted accounting procedures, by totaling the expenditures of the hospital-school or special unit for the immediately preceding calendar year, by adjusting the expenditures by a percentage not to exceed the percentage increase in the consumer price index for all urban consumers for the immediately preceding calendar year, and by dividing the adjusted expenditures by the total inpatient days of service provided during the immediately preceding calendar year.

b. The department shall compute the outpatient treatment charges, in accordance with generally accepted accounting procedures, on the basis of the actual cost of the outpatient treatment provided during the immediately preceding calendar year.

2. The superintendent shall certify to the director of revenue and finance the billings to each county for services provided to patients chargeable to the county during the preceding calendar quarter. The county billings shall be based on the average daily patient charge and outpatient treatment charges computed pursuant to subsection 1, and the number of inpatient days and outpatient treatment service units chargeable to the county. The billings to a county of legal settlement are subject to adjustment for all of the following circumstances:

a. The county billing for a patient shall be reduced by the amount received for the patient's care from a source other than state appropriated funds.

b. If more than twenty percent of the cost of a patient's care is initially paid from a source other than state appropriated funds, the amount paid shall be subtracted from the average per-patient-per-day cost of that patient's care and the patient's county shall be billed for the full balance of the cost so computed.

c. The county of a patient who is eligible for reimbursement under the medical assistance program shall be responsible for the costs which are not reimbursed by the medical assistance program, regardless of the level of care provided to the patient.

d. A county shall be responsible for eighty percent of the cost of care of a patient who is not eligible for reimbursement under the medical assistance program.

e. The billings for counties shall be credited with one hundred percent of the client participation for patients eligible for medical assistance in the calculation of the per diem rate for patients.

The per diem costs billed to each county shall not exceed the per diem costs in effect on July 1, 1988. However, the per diem costs may be adjusted annually to the extent of the adjustment in the consumer

price index published annually in the federal register by the federal department of labor, bureau of labor statistics.

3. The superintendent shall compute in January the actual per-patient-per-day cost for each hospital-school or special unit for the immediately preceding calendar year, in accordance with generally accepted accounting procedures, by totaling the actual expenditures of the hospital-school or special unit for the calendar year and by dividing the total actual expenditures by the total inpatient days of service provided during the calendar year.

4. The department shall certify to the director of revenue and finance and the counties by February 1 the actual per-patient-per-day costs, as computed pursuant to subsection 3, and the actual costs owed by each county for the immediately preceding calendar year for patients chargeable to the county. If the actual costs owed by the county are greater than the charges billed to the county pursuant to subsection 2, the director of revenue and finance shall bill the county for the difference with the billing for the quarter ending June 30. If the actual costs owed by

the county are less than the charges billed to the county pursuant to subsection 2, the director of revenue and finance shall credit the county for the difference starting with the billing for the quarter ending June 30.

5. A superintendent of a hospital-school or special unit may enter into a contract with a person for the hospital-school or special unit to provide consultation or treatment services. The contract provisions shall include charges which reflect the actual cost of providing the services. Any income from a contract authorized under this subsection may be retained by the hospital-school or special unit to defray the costs of providing the services. Except for a contract voluntarily entered into by a county under this subsection, the costs or income associated with a contract authorized under this subsection shall not be considered in computing charges and per diem costs in accordance with the provisions of subsections 1 through 4 of this section.

95 Acts, ch 82, §4
NEW subsection 5

CHAPTER 225C

MENTAL ILLNESS, MENTAL RETARDATION, DEVELOPMENTAL DISABILITIES, OR BRAIN INJURY

Request for federal waiver required for home and community-based medical assistance services on or before July 1, 1995; prohibition against mandatory county funding; inclusion of consumer directed attendant care in waivers; home and community-based waiver for persons with physical disabilities, appropriation, and pilot project for the personal assistance services program under §225C.46; 94 Acts, ch 1160, §1; 94 Acts, ch 1170, §57; 95 Acts, ch 205, §3, 20; 95 Acts, ch 209, §29

225C.4 Administrator's duties.

1. To the extent funding is available, the administrator shall perform the following duties:

a. Prepare and administer state mental health and mental retardation plans for the provision of disability services within the state and prepare and administer the state developmental disabilities plan. The administrator shall consult with the Iowa department of public health, the state board of regents or a body designated by the board for that purpose, the department of management or a body designated by the director of the department for that purpose, the department of education, the division of job service of the department of employment services and any other appropriate governmental body, in order to facilitate coordination of disability services provided in this state. The state mental health and mental retardation plans shall be consistent with the state health plan, and shall incorporate county disability services plans.

b. Assist county boards of supervisors and mental health and developmental disabilities regional planning councils in planning for community-based disability services.

c. Emphasize the provision of outpatient services by community mental health centers and local mental retardation providers as a preferable alternative to inpatient hospital services.

d. Encourage and facilitate coordination of disability services with the objective of developing and maintaining in the state a disability service delivery system to provide disability services to all persons in this state who need the services, regardless of the place of residence or economic circumstances of those persons.

e. Encourage and facilitate applied research and preventive educational activities related to causes and appropriate treatment for disabilities. The administrator may designate, or enter into agreements with, private or public agencies to carry out this function.

f. Promote coordination of community-based services with those of the state mental health institutes and state hospital-schools.

g. Administer state programs regarding the care, treatment, and supervision of persons with mental illness or mental retardation, except the programs administered by the state board of regents.

h. Administer and control the operation of the state institutions established by chapters 222 and 226, and any other state institutions or facilities providing care, treatment, and supervision to persons with mental illness or mental retardation, except the institutions and facilities of the state board of regents.

i. Administer state appropriations to the mental health and developmental disabilities community services fund established by section 225C.7.

j. Act as compact administrator with power to effectuate the purposes of interstate compacts on mental health.

k. Establish and maintain a data collection and management information system oriented to the needs of patients, providers, the department, and other programs or facilities.

l. Prepare a division budget and reports of the division's activities.

m. Establish suitable agreements with other state agencies to encourage appropriate care and to facilitate the coordination of disability services.

n. Provide consultation and technical assistance to patients' advocates appointed pursuant to section 229.19, in cooperation with the judicial department and the care review committees appointed for health care facilities pursuant to section 135C.25.

o. Provide technical assistance to agencies and organizations, to aid them in meeting standards which are established, or with which compliance is required, under statutes administered by the administrator, including but not limited to chapters 227 and 230A.

p. Recommend and enforce minimum accreditation standards for the maintenance and operation of community mental health centers under section 230A.16.

q. In cooperation with the department of inspections and appeals, recommend minimum standards under section 227.4 for the care of and services to persons with mental illness and mental retardation residing in county care facilities.

r. In cooperation with the Iowa department of public health, recommend minimum standards for the maintenance and operation of public or private facilities offering disability services, which are not subject to licensure by the department or the department of inspections and appeals.

s. Provide technical assistance concerning disability services and funding to counties and mental health and developmental disabilities regional planning councils.

2. The administrator may:

a. Apply for, receive, and administer federal aids, grants, and gifts for purposes relating to disability services or programs.

b. Establish mental health and mental retardation services for all institutions under the control of the director of human services and establish an autism unit, following mutual planning with and consultation from the medical director of the state psychiatric hospital, at an institution or a facility

administered by the administrator to provide psychiatric and related services and other specific programs to meet the needs of autistic persons, and to furnish appropriate diagnostic evaluation services.

c. Establish and supervise suitable standards of care, treatment, and supervision for persons with disabilities in all institutions under the control of the director of human services.

d. Appoint professional consultants to furnish advice on any matters pertaining to disability services. The consultants shall be paid as provided by an appropriation of the general assembly.

e. Administer a public housing unit within a bureau of the division to apply for, receive, and administer federal assistance, grants, and other public or private funds for purposes related to providing housing in accordance with section 225C.45.

95 Acts, ch 82, §2, 13; 95 Acts, ch 206, §7

1995 amendment to subsection 2, paragraph b, is effective January 1, 1996; applicability; 95 Acts, ch 206, §12

Subsection 1, paragraph o stricken and former paragraphs p-t relettered as o-s

Subsection 2, paragraphs b and e amended

225C.45 Public housing unit.

1. The administrator may establish a public housing unit within a bureau of the division to apply for, receive, and administer federal assistance, grants, and other public or private funds for purposes related to providing housing.

2. In implementing the public housing unit, the division may do all of the following:

a. Prepare, implement, and operate housing projects and provide for the construction, improvement, extension, alteration, or repair of a housing project under the division's jurisdiction.

b. Develop and implement studies, conduct analyses, and engage in research concerning housing and housing needs. The information obtained from these activities shall be made available to the public and to the building, housing, and supply industries.

c. Cooperate with the Iowa finance authority and participate in any of the authority's programs. Use any funds obtained pursuant to subsection 1 to participate in the authority's programs. The division shall comply with rules adopted by the authority as the rules apply to the housing activities of the division.

3. In accepting contributions, grants, or other financial assistance from the federal government relating to a housing activity of the division, including construction, operation, or maintenance, or in managing a housing project or undertaking constructed or owned by the federal government, the division may do any of the following:

a. Comply with federally required conditions or enter into contracts or agreements as may be necessary, convenient, or desirable.

b. Take any other action necessary or desirable in order to secure the financial aid or cooperation of the federal government.

c. Include in a contract with the federal government for financial assistance any provision which the

federal government may require as a condition of the assistance that is consistent with the provisions of this section.

4. The division shall not proceed with a housing project pursuant to this section, unless both of the following conditions are met:

a. A study for a report which includes recommendations concerning the housing available within a community is publicly issued by the division. The study shall be included in the division's recommendations for a housing project.

b. The division's recommendations are approved by a majority of the city council or board of supervisors with jurisdiction over the geographic area affected by the recommendations.

5. Property acquired or held pursuant to this section is public property used for essential public purposes and is declared to be exempt from any tax or special assessment of the state or any state public body as defined in section 403A.2. In lieu of taxes on the property, the division may agree to make payments to the state or a state public body, including but not limited to the division, as the division finds necessary to maintain the purpose of providing low-cost housing in accordance with this section.

6. Any property owned or held by the division pursuant to this section is exempt from levy and sale by execution. An execution or other judicial process shall not be issued against the property and a judgment against the division shall not be a lien or charge against the property. However, the provisions of this subsection shall not apply to or limit the right of the federal government to pursue any remedies available under this section. The provisions of this subsection shall also not apply to or limit the right of an obligee to take either of the following actions:

a. Foreclose or otherwise enforce a mortgage or other security executed or issued pursuant to this section.

b. Pursue remedies for the enforcement of a pledge or lien on rents, fees, or revenues.

7. In any contract with the federal government to provide annual payments to the division, the division may obligate itself to convey to the federal government possession of or title to the housing project in the event of a substantial default as defined in the contract and with respect to the covenant or conditions to which the division is subject. The obligation shall be specifically enforceable and shall not constitute a mortgage. The contract may also provide that in the event of a conveyance, the federal government may complete, operate, manage, lease, convey, or otherwise deal with the housing project and funds in accordance with the terms of the contract. However, the contract shall require that, as soon as is practicable after the federal government is satisfied that all defaults with respect to the housing project are cured and the housing project will be operated in accordance with the terms of the contract, the federal government shall reconvey the housing project to the division.

8. The division shall not undertake a housing project pursuant to this section until a public hearing has been held. At the hearing, the division shall notify the public of the proposed project's name, location, number of living units proposed, and approximate cost. Notice of the public hearing shall be published at least once in a newspaper of general circulation at least fifteen days prior to the date set for the hearing.

95 Acts, ch 82, §3
Subsection 1 amended

CHAPTER 228

DISCLOSURE OF MENTAL HEALTH AND PSYCHOLOGICAL INFORMATION

228.1 Definitions.

As used in this chapter:

1. "Administrative information" means an individual's name, identifying number, age, sex, address, dates and character of professional services provided to the individual, fees for the professional services, third-party payor name and payor number of a patient, if known, name and location of the facility where treatment is received, the date of the individual's admission to the facility, and the name of the individual's attending physician or attending mental health professional.

2. "Data collector" means a person, other than a mental health professional or an employee of or agent for a mental health facility, who regularly assembles or evaluates mental health information.

3. "Diagnostic information" means a therapeutic characterization of the type found in the diagnostic

and statistical manual of mental disorders of the American psychiatric association or in a comparable professionally recognized diagnostic manual.

4. "Mental health facility" means a community mental health center, hospital, clinic, office, health care facility, infirmary, or similar place in which professional services are provided.

5. "Mental health information" means oral, written, or recorded information which indicates the identity of an individual receiving professional services and which relates to the diagnosis, course, or treatment of the individual's mental or emotional condition.

6. "Mental health professional" means an individual who has all of the following qualifications:

a. The individual holds at least a master's degree in a mental health field, including but not limited to, psychology, counseling and guidance, nursing, and

social work, or the individual is a physician and surgeon or an osteopathic physician and surgeon.

b. The individual holds a current Iowa license if practicing in a field covered by an Iowa licensure law.

c. The individual has at least two years of post-degree clinical experience, supervised by another mental health professional, in assessing mental health needs and problems and in providing appropriate mental health services.

7. "*Peer review organization*" means a utilization and quality control peer review organization that has a contract with the federal secretary of health and human services pursuant to Title XI, part B, of the federal Social Security Act to review health care services paid for in whole or in part under the Medicare program established by Title XVIII of the federal Social Security Act, or another organization of licensed health care professionals performing utilization and quality control review functions.

8. "*Professional services*" means diagnostic or

treatment services for a mental or emotional condition provided by a mental health professional.

9. "*Self-insured employer*" means a person which provides accident and health benefits or medical, surgical, or hospital benefits on a self-insured basis to its own employees or to employees of an affiliated company or companies and which does not otherwise provide accident and health benefits or medical, surgical, or hospital benefits.

10. "*Third-party payor*" means a person which provides accident and health benefits or medical, surgical, or hospital benefits, whether on an indemnity, reimbursement, service, or prepaid basis, including but not limited to, insurers, nonprofit health service corporations, health maintenance organizations, governmental agencies, and self-insured employers.

95 Acts, ch 120, §2
Subsection 1 amended

CHAPTER 229

HOSPITALIZATION OF PERSONS WITH MENTAL ILLNESS

229.1 Definitions.

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

1. "*Administrator*" means the administrator of that division of the department of human services having jurisdiction of the state mental health institutes, or that administrator's designee.

2. "*Chemotherapy*" means treatment of an individual by use of a drug or substance which cannot legally be delivered or administered to the ultimate user without a physician's prescription or medical order.

3. "*Chief medical officer*" means the medical director in charge of a public or private hospital, or that individual's physician-designee. This chapter does not negate the authority otherwise reposed by law in the respective superintendents of each of the state hospitals for the mentally ill, established by chapter 226, to make decisions regarding the appropriateness of admissions or discharges of patients of that hospital, however it is the intent of this chapter that if the superintendent is not a licensed physician the decisions by the superintendent shall be corroborated by the chief medical officer of the hospital.

4. "*Clerk*" means the clerk of the district court.

5. "*Hospital*" means either a public hospital or a private hospital.

6. "*Licensed physician*" means an individual licensed under the provisions of chapter 148, 150 or 150A to practice medicine and surgery, osteopathy or osteopathic medicine and surgery.

7. "*Mental illness*" means every type of mental disease or mental disorder, except that it does not

refer to mental retardation as defined in section 222.2, subsection 3, or to insanity, diminished responsibility, or mental incompetency as the terms are defined and used in the Iowa criminal code or in the rules of criminal procedure, Iowa court rules, 3d ed.

8. "*Patient*" means a person who has been hospitalized or ordered hospitalized to receive treatment pursuant to section 229.14.

9. "*Private hospital*" means any hospital or institution not directly supported by public funds, or a part thereof, which is equipped and staffed to provide inpatient care to the mentally ill.

10. "*Public hospital*" means:

a. A state mental health institute established by chapter 226; or

b. The state psychiatric hospital established by chapter 225; or

c. Any other publicly supported hospital or institution, or part of such hospital or institution, which is equipped and staffed to provide inpatient care to the mentally ill, except the Iowa medical and classification center established by chapter 904.

11. "*Qualified mental health professional*" means an individual experienced in the study and treatment of mental disorders in the capacity of:

a. A psychologist certified under chapter 154B; or

b. A registered nurse licensed under chapter 152; or

c. A social worker who holds a master's degree in social work awarded by an accredited college or university.

12. "*Respondent*" means any person against whom an application has been filed under section

229.6, but who has not been finally ordered committed for full-time custody, care and treatment in a hospital.

13. "*Serious emotional injury*" is an injury which does not necessarily exhibit any physical characteristics, but which can be recognized and diagnosed by a licensed physician or other qualified mental health professional and which can be causally connected with the act or omission of a person who is, or is alleged to be, mentally ill.

14. "*Seriously mentally impaired*" or "*serious mental impairment*" describes the condition of a person who is afflicted with mental illness and because of that illness lacks sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment, and who because of that illness meets any of the following criteria:

a. Is likely to physically injure the person's self or others if allowed to remain at liberty without treatment.

b. Is likely to inflict serious emotional injury on members of the person's family or others who lack reasonable opportunity to avoid contact with the afflicted person if the afflicted person is allowed to remain at liberty without treatment.

c. Is unable to satisfy the person's needs for nourishment, clothing, essential medical care, or shelter so that it is likely that the person will suffer physical injury, physical debilitation, or death.

95 Acts, ch 24, §1

Subsection 14, paragraph c amended

229.22 Hospitalization — emergency procedure.

1. The procedure prescribed by this section shall not be used unless it appears that a person should be immediately detained due to serious mental impairment, but that person cannot be immediately detained by the procedure prescribed in sections 229.6 and 229.11 because there is no means of immediate access to the district court.

2. In the circumstances described in subsection 1, any peace officer who has reasonable grounds to believe that a person is mentally ill, and because of that illness is likely to physically injure the person's self or others if not immediately detained, may without a warrant take or cause that person to be taken to the nearest available facility as defined in section 229.11, subsections 2 and 3. A person believed mentally ill, and likely to injure the person's self or others if not immediately detained, may be delivered to a hospital by someone other than a peace officer. Upon delivery of the person believed mentally ill to the hospital, the chief medical officer may order treatment of that person, including chemotherapy, but only to the extent necessary to preserve the person's life or to appropriately control behavior by the person which is likely to result in physical injury to that person or others if allowed to continue. The peace officer who took the person into custody, or other party who brought the person to the hospital, shall describe the circumstances of the matter to the chief

medical officer. If the chief medical officer finds that there is reason to believe that the person is seriously mentally impaired, and because of that impairment is likely to physically injure the person's self or others if not immediately detained, the chief medical officer shall at once communicate with the nearest available magistrate as defined in section 801.4, subsection 10. The magistrate shall, based upon the circumstances described by the chief medical officer, give the chief medical officer verbal instructions either directing that the person be released forthwith or authorizing the person's continued detention at that facility. In the latter case, the magistrate shall:

a. By the close of business on the next working day, file with the clerk a written report stating the substance of the information on the basis of which the person's continued detention was ordered; and

b. Proceed to the facility where the person is being detained within twenty-four hours of giving instructions that the person be detained.

3. Upon arrival at the hospital, the magistrate shall at once review the matter. Unless convinced upon initial inquiry that there are no grounds for further detention of the person, the magistrate shall in the manner prescribed by section 229.8, subsection 1 insure that the person has or is provided legal counsel at the earliest practicable time, and shall arrange for the counsel to be present, if practicable, before proceeding further under this section. If the magistrate finds upon review of the report prepared by the chief medical officer under subsection 2 of this section, and of such other information or evidence as the magistrate deems pertinent, that there is probable cause to believe that the person is seriously mentally impaired and because of that impairment is likely to physically injure the person's self or others if not detained, the magistrate shall enter a written order for the person to be detained in custody and, if the facility where the person is at that time is not an appropriate hospital, transported to an appropriate hospital. The magistrate's order shall state the circumstances under which the person was taken into custody or otherwise brought to a hospital and the grounds supporting the finding of probable cause to believe that the person is seriously mentally impaired and likely to physically injure the person's self or others if not immediately detained. The order shall be filed with the clerk of the district court in the county where it is anticipated that an application will be filed under section 229.6, and a certified copy of the order shall be delivered to the chief medical officer of the hospital where the person is detained, at the earliest practicable time.

4. The chief medical officer of the hospital shall examine and may detain and care for the person taken into custody under the magistrate's order for a period not to exceed forty-eight hours from the time such order is dated, excluding Saturdays, Sundays and holidays, unless the order is sooner dismissed by a magistrate. The hospital may provide treatment which is necessary to preserve the person's life, or to appropriately control behavior by the person which is

likely to result in physical injury to the person's self or others if allowed to continue, but may not otherwise provide treatment to the person without the person's consent. The person shall be discharged from the hospital and released from custody not later than the expiration of that period, unless an application for the person's involuntary hospitalization is sooner filed with the clerk pursuant to section 229.6. The detention of any person by the procedure and not in excess of the period of time prescribed by this section shall not render the peace officer, physician or hospital so detaining that person liable in a criminal or civil action for false arrest or false imprisonment if the peace officer, physician or hospital had reasonable grounds to believe the person so detained was mentally ill and likely to physically injure the person's self or others if not immediately detained.

5. The cost of hospitalization at a public hospital of a person detained temporarily by the procedure prescribed in this section shall be paid in the same way as if the person had been admitted to the hospital by the procedure prescribed in sections 229.6 to 229.13.

95 Acts, ch 24, §2
Subsection 2 amended

229.24 Records of involuntary hospitalization proceeding to be confidential.

1. All papers and records pertaining to any involuntary hospitalization or application for involuntary hospitalization of any person under this chapter, whether part of the permanent record of the court or of a file in the department of human services, are subject to inspection only upon an order of the court for good cause shown. Nothing in this section shall

prohibit a hospital from complying with the requirements of this chapter and of chapter 230 relative to financial responsibility for the cost of care and treatment provided a patient in that hospital, nor from properly billing any responsible relative or third-party payer for such care and treatment.

2. If authorized in writing by a person who has been the subject of any proceeding or report under sections 229.6 to 229.13 or section 229.22, or by the parent or guardian of that person, information regarding that person which is confidential under subsection 1 may be released to any designated person.

3. If all or part of the costs associated with hospitalization of an individual under this chapter are chargeable to a county of legal settlement, the county of legal settlement and the county in which the hospitalization order is entered shall have access to the following information pertaining to the individual which would be confidential under subsection 1:

a. Administrative information, as defined in section 228.1.

b. An evaluation order under this chapter and the location of the individual's placement under the order.

c. A hospitalization or placement order under this chapter and the location of the individual's placement under the order.

d. The date, location, and disposition of any hearing concerning the individual held under this chapter.

e. Any payment source available for the costs of the individual's care.

95 Acts, ch 120, §3
NEW subsection 3

CHAPTER 230

SUPPORT OF PERSONS WITH MENTAL ILLNESS

230.12 Legal settlement disputes.

1. If a dispute arises between different counties or between the administrator and a county as to the legal settlement of a person admitted or committed to a state hospital for the mentally ill, the attorney general, at the request of the administrator, shall, without the advancement of fees, cause an action to be brought in the district court of any county where such dispute exists, to determine the person's legal settlement. This action may be brought at any time when it appears that the dispute cannot be amicably settled. All counties which may be the place of the legal settlement, so far as known, shall be made defendants and the allegation of the settlement may be in the alternative. The action shall be tried as in equity.

2. In lieu of an action filed under subsection 1, the parties to a dispute concerning a person's legal settlement may settle the dispute through an alternative dispute resolution process agreed to by the parties.

The alternative dispute resolution process may include but is not limited to mediation, binding arbitration, or other mutually agreeable form of resolution. A resolution of the dispute agreed to by the parties shall be stipulated to and filed in the office of the clerk of the district court.

3. If an action under this section involves a dispute between counties, the county determined to be the county of legal settlement shall reimburse a county for the amount of costs paid by that county on behalf of the person and for interest on this amount in accordance with section 535.3. In addition, the court may order the county determined to be the county of legal settlement to reimburse any other county involved in the dispute for the other county's reasonable legal costs related to the dispute and may tax the reasonable legal costs as court costs. The court may order the county determined to be the county of legal settlement to pay a penalty to the other county, in an amount which does not exceed

twenty percent of the total amount of reimbursement and interest.

4. An action filed or an alternative dispute resolution stipulated to under this section is subject to the applicable provisions of sections 230.13 and 230.14.

95 Acts, ch 119, §1

Applicability of subsection 4; 95 Acts, ch 119, §5

NEW subsection 4

230.20 Billing of patient charges — computation of actual costs — cost settlement.

1. The superintendent of each mental health institute shall compute by February 1 the average daily patient charges and other service charges for which each county will be billed for services provided to patients chargeable to the county during the fiscal year beginning the following July 1. The department shall certify the amount of the charges to the director of revenue and finance and notify the counties of the billing charges.

a. The superintendent shall separately compute by program the average daily patient charge for a mental health institute for services provided in the following fiscal year, in accordance with generally accepted accounting procedures, by totaling the expenditures of the program for the immediately preceding calendar year, by adjusting the expenditures by a percentage not to exceed the percentage increase in the consumer price index for all urban consumers for the immediately preceding calendar year, and by dividing the adjusted expenditures by the total inpatient days of service provided in the program during the immediately preceding calendar year. However, the superintendent shall not include the following in the computation of the average daily patient charge:

(1) The costs of food, lodging, and other maintenance provided to persons not patients of the hospital.

(2) The costs of certain direct medical services identified in administrative rule, which may include but need not be limited to X-ray, laboratory, and dental services.

(3) The costs of outpatient and state placement services.

(4) The costs of the psychiatric residency program.

(5) The costs of the chaplain intern program.

b. The department shall compute the direct medical services, outpatient, and state placement services charges, in accordance with generally accepted accounting procedures, on the basis of the actual cost of the services provided during the immediately preceding calendar year. The direct medical services, outpatient, and state placement services shall be billed directly against the patient who received the services.

2. The superintendent shall certify to the director of revenue and finance the billings to each county for services provided to patients chargeable to the county during the preceding calendar quarter. The county billings shall be based on the average daily patient charge and other service charges computed pursuant to subsection 1, and the number of inpa-

tient days and other service units chargeable to the county. However, a county billing shall be decreased by an amount equal to reimbursement by a third party payor or estimation of such reimbursement from a claim submitted by the superintendent to the third party payor for the preceding calendar quarter. When the actual third party payor reimbursement is greater or less than estimated, the difference shall be reflected in the county billing in the calendar quarter the actual third party payor reimbursement is determined. The per diem costs billed to each county shall not exceed the per diem costs in effect on July 1, 1988. However, the per diem costs may be adjusted annually to the extent of the adjustment in the consumer price index published annually in the federal register by the federal department of labor, bureau of labor statistics.

3. The superintendent shall compute in January the actual per-patient-per-day cost for each mental health institute for the immediately preceding calendar year, in accordance with generally accepted accounting procedures, by totaling the actual expenditures of the mental health institute for the calendar year and by dividing the total actual expenditures by the total inpatient days of service provided during the calendar year.

4. The department shall certify to the director of revenue and finance and the counties by February 1 the actual per-patient-per-day costs, as computed pursuant to subsection 3, and the actual costs owed by each county for the immediately preceding calendar year for patients chargeable to the county. If the actual costs owed by the county are greater than the charges billed to the county pursuant to subsection 2, the director of revenue and finance shall bill the county for the difference with the billing for the quarter ending June 30. If the actual costs owed by the county are less than the charges billed to the county pursuant to subsection 2, the director of revenue and finance shall credit the county for the difference starting with the billing for the quarter ending June 30.

5. An individual statement shall be prepared for a patient on or before the fifteenth day of the month following the month in which the patient leaves the mental health institute, and a general statement shall be prepared at least quarterly for each county to which charges are made under this section. Except as otherwise required by sections 125.33 and 125.34 the general statement shall list the name of each patient chargeable to that county who was served by the mental health institute during the preceding month or calendar quarter, the amount due on account of each patient, and the specific dates for which any third party payor reimbursement received by the state is applied to the statement and billing, and the county shall be billed for eighty percent of the stated charge for each patient specified in this subsection. The statement prepared for each county shall be certified by the department to the director of revenue and finance and a duplicate statement shall be mailed to the auditor of that county.

6. All or any reasonable portion of the charges incurred for services provided to a patient, to the most recent date for which the charges have been computed, may be paid at any time by the patient or by any other person on the patient's behalf. Any payment so made, and any federal financial assistance received pursuant to Title XVIII or XIX of the federal Social Security Act for services rendered to a patient, shall be credited against the patient's account and, if the charges so paid have previously been billed to a county, reflected in the mental health institute's next general statement to that county.

7. A superintendent of a mental health institute may enter into a contract with a person for the mental health institute to provide consultation or treatment services. The contract provisions shall include charges which reflect the actual cost of providing the services. Any income from a contract

authorized under this subsection may be retained by the mental health institute to defray the costs of providing the services. Except for a contract voluntarily entered into by a county under this subsection, the costs or income associated with a contract authorized under this subsection shall not be considered in computing charges and per diem costs in accordance with the provisions of subsections 1 through 6 of this section.

8. The department shall provide a county with information, which is not otherwise confidential under law, in the department's possession concerning a patient whose cost of care is chargeable to the county, including but not limited to the information specified in section 229.24, subsection 3.

95 Acts, ch 82, §5; 95 Acts, ch 120, §4
NEW subsections 7 and 8

CHAPTER 232

JUVENILE JUSTICE

For provisions concerning court orders under this chapter which impose terms and conditions on the parent, guardian, or custodian of a child, see §232.106
Pilot kinship care project to enhance family involvement in case permanency plans for children removed from their homes; 95 Acts, ch 205, §10

232.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. "*Abandonment of a child*" means the relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

2. "*Adjudicatory hearing*" means a hearing to determine if the allegations of a petition are true.

3. "*Adult*" means a person other than a child.

4. "*Case permanency plan*" means the plan, mandated by Pub. L. No. 96-272, as codified in 42 U.S.C. § 671(a)(16), 627(a)(2)(B), and 675(1), (5), which is designed to achieve placement in the least restrictive, most family-like setting available and in close proximity to the parent's home, consistent with the best interests and special needs of the child, and which considers the placement's proximity to the school in which the child is enrolled at the time of placement. The plan shall be developed by the department or agency involved and the child's parent, guardian, or custodian. The plan shall specifically include all of the following:

a. Plans for carrying out the voluntary placement agreement or judicial determination pursuant to which the child entered care.

b. The type and appropriateness of the placement and services to be provided to the child.

c. The care and services that will be provided to the child, biological parents, and foster parents.

d. How the care and services will meet the needs of the child while in care and will facilitate the child's return home or other permanent placement.

e. To the extent the records are available and accessible, a summary of the child's health and education records, including the date the records were supplied to the agency or individual who is the child's foster care provider.

f. When a child is sixteen years of age or older, a written plan of services which, based upon an assessment of the child's needs, would assist the child in preparing for the transition from foster care to independent living. If the child is interested in pursuing higher education, the plan shall provide for the child's participation in the college student aid commission's program of assistance in applying for federal and state aid under section 261.2.

g. The actions expected of the parent, guardian, or custodian in order for the department or agency to recommend that the court terminate a dispositional order for the child's out-of-home placement and for the department or agency to end its involvement with the child and the child's family.

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

6. "*Child in need of assistance*" means an unmarried child:

a. Whose parent, guardian or other custodian has abandoned or deserted the child.

b. Whose parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

c. Who has suffered or is imminently likely to suffer harmful effects as a result of either of the following:

(1) Mental injury caused by the acts of the child's parent, guardian, or custodian.

(2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

d. Who has been, or is imminently likely to be, sexually abused by the child's parent, guardian, custodian or other member of the household in which the child resides.

e. Who is in need of medical treatment to cure, alleviate, or prevent serious physical injury or illness and whose parent, guardian or custodian is unwilling or unable to provide such treatment.

f. Who is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior toward self or others and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

g. Whose parent, guardian, or custodian fails to exercise a minimal degree of care in supplying the child with adequate food, clothing or shelter and refuses other means made available to provide such essentials.

h. Who has committed a delinquent act as a result of pressure, guidance, or approval from a parent, guardian, custodian, or other member of the household in which the child resides.

i. Who has been the subject of or a party to sexual activities for hire or who poses for live display or for photographic or other means of pictorial reproduction or display which is designed to appeal to the prurient interest and is patently offensive; and taken as a whole, lacks serious literary, scientific, political or artistic value.

j. Who is without a parent, guardian or other custodian.

k. Whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody.

l. Who for good cause desires to have the child's parents relieved of the child's care and custody.

m. Who is in need of treatment to cure or alleviate chemical dependency and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

n. Whose parent's or guardian's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care.

o. Who is described by any other paragraph of this subsection and in whose body there is an illegal drug present as a direct consequence of the acts or omissions of the child's parent, guardian, or custodian

which a reasonable and prudent person knew or should have known is likely to lead to the drug's presence in the child's body. The presence of the drug shall be determined in accordance with a medically relevant test as defined in section 232.73.

7. "*Complaint*" means an oral or written report which is made to the juvenile court by any person and alleges that a child is within the jurisdiction of the court.

8. "*Court*" means the juvenile court established under section 602.7101.

9. "*Court appointed special advocate*" means a person duly certified by the judicial department for participation in the court appointed special advocate program and appointed by the court to represent the interests of a child in any judicial proceeding to which the child is a party or is called as a witness or relating to any dispositional order involving the child resulting from such proceeding.

10. "*Criminal or juvenile justice agency*" means any agency which has as its primary responsibility the enforcement of the state's criminal laws or of local ordinances made pursuant to state law.

11. "*Custodian*" means a stepparent or a relative within the fourth degree of consanguinity to a child who has assumed responsibility for that child, a person who has accepted a release of custody pursuant to division IV, or a person appointed by a court or juvenile court having jurisdiction over a child. The rights and duties of a custodian with respect to a child are as follows:

a. To maintain or transfer to another the physical possession of that child.

b. To protect, train, and discipline that child.

c. To provide food, clothing, housing, and medical care for that child.

d. To consent to emergency medical care, including surgery.

e. To sign a release of medical information to a health professional.

All rights and duties of a custodian shall be subject to any residual rights and duties remaining in a parent or guardian.

12. "*Delinquent act*" means:

a. The violation of any state law or local ordinance which would constitute a public offense if committed by an adult except any offense which by law is exempted from the jurisdiction of this chapter.

b. The violation of a federal law or a law of another state which violation constitutes a criminal offense if the case involving that act has been referred to the juvenile court.

13. "*Department*" means the department of human services and includes the local, county and regional officers of the department.

14. "*Desertion*" means the relinquishment or surrender for a period in excess of six months of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of desertion need not include the intention to desert, but is evidenced by the lack of attempted contact with the child or by only incidental contact with the child.

15. “*Detention*” means the temporary care of a child in a physically restricting facility designed to ensure the continued custody of the child at any point between the child’s initial contact with the juvenile authorities and the final disposition of the child’s case.

16. “*Detention hearing*” means a hearing at which the court determines whether it is necessary to place or retain a child in detention.

17. “*Director*” means the director of the department of human services or that person’s designee.

18. “*Dismissal of complaint*” means the termination of all proceedings against a child.

19. “*Dispositional hearing*” means a hearing held after an adjudication to determine what dispositional order should be made.

20. “*Family in need of assistance*” means a family in which there has been a breakdown in the relationship between a child and the child’s parent, guardian or custodian.

21. “*Guardian*” means a person who is not the parent of a child, but who has been appointed by a court or juvenile court having jurisdiction over the child, to make important decisions which have a permanent effect on the life and development of that child and to promote the general welfare of that child. A guardian may be a court or a juvenile court. Guardian does not mean conservator, as defined in section 633.3, although a person who is appointed to be a guardian may also be appointed to be a conservator.

Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the rights and duties of a guardian with respect to a child shall be as follows:

a. To consent to marriage, enlistment in the armed forces of the United States, or medical, psychiatric, or surgical treatment.

b. To serve as guardian ad litem, unless the interests of the guardian conflict with the interests of the child or unless another person has been appointed guardian ad litem.

c. To serve as custodian, unless another person has been appointed custodian.

d. To make periodic visitations if the guardian does not have physical possession or custody of the child.

e. To consent to adoption and to make any other decision that the parents could have made when the parent-child relationship existed.

22. “*Guardian ad litem*” means a person appointed by the court to represent the interests of a child in any judicial proceeding to which the child is a party, and includes a court appointed special advocate, except that a court appointed special advocate shall not file motions or petitions pursuant to section 232.54, subsections 1 and 4, section 232.103, subsection 2, paragraph “c”, and section 232.111.

Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the duties of a guardian ad litem with respect to a child shall include the following:

a. Conducting in-person interviews with the child and each parent, guardian, or other person having custody of the child.

b. Visiting the home, residence, or both home and residence of the child and any prospective home or residence of the child.

c. Interviewing any person providing medical, social, educational, or other services to the child.

d. Obtaining first-hand knowledge, if possible, of the facts, circumstances, and parties involved in the matter in which the person is appointed guardian ad litem.

e. Attending any hearings in the matter in which the person is appointed as the guardian ad litem.

23. “*Health practitioner*” means a licensed physician or surgeon, osteopath, osteopathic physician or surgeon, dentist, optometrist, podiatric physician, or chiropractor, a resident or intern of any such profession, and any registered nurse or licensed practical nurse.

24. “*Informal adjustment*” means the disposition of a complaint without the filing of a petition and may include but is not limited to the following:

a. Placement of the child on nonjudicial probation.

b. Provision of intake services.

c. Referral of the child to a public or private agency other than the court for services.

25. “*Informal adjustment agreement*” means an agreement between an intake officer, a child who is the subject of a complaint, and the child’s parent, guardian or custodian providing for the informal adjustment of the complaint.

26. “*Intake*” means the preliminary screening of complaints by an intake officer to determine whether the court should take some action and if so, what action.

27. “*Intake officer*” means a juvenile court officer or other officer appointed by the court to perform the intake function.

28. “*Judge*” means the judge of a juvenile court.

29. “*Juvenile*” means the same as “*child*”. However, in the interstate compact on juveniles, sections 232.171 and 232.172, “*juvenile*” means a person defined as a juvenile in the law of a state which is a party to the compact.

30. “*Juvenile court officer*” means a person appointed as a juvenile court officer under section 602.7202 and a chief juvenile court officer appointed under section 602.1217.

31. “*Juvenile court social records*” or “*social records*” means all records made with respect to a child in connection with proceedings over which the court has jurisdiction under this chapter other than official records and includes but is not limited to the records made and compiled by intake officers, pre-disposition reports, and reports of physical and mental examinations.

32. “*Juvenile detention home*” means a physically restricting facility used only for the detention of children.

33. “*Juvenile parole officer*” means a person representing an agency which retains jurisdiction over

the case of a child adjudicated to have committed a delinquent act, placed in a secure facility and subsequently released, who supervises the activities of the child until the case is dismissed.

34. "*Juvenile shelter care home*" means a physically unrestricting facility used only for the shelter care of children.

35. "*Mental injury*" means a nonorganic injury to a child's intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, considering the child's cultural origin.

36. "*Nonjudicial probation*" means the informal adjustment of a complaint which involves the supervision of the child who is the subject of the complaint by an intake officer or juvenile court officer for a period during which the child may be required to comply with specified conditions concerning the child's conduct and activities.

37. "*Nonsecure facility*" means a physically unrestricting facility in which children may be placed pursuant to a dispositional order of the court made in accordance with the provisions of this chapter.

38. "*Official juvenile court records*" or "*official records*" means official records of the court of proceedings over which the court has jurisdiction under this chapter which includes but is not limited to the following:

- a. The docket of the court and entries therein.
- b. Complaints, petitions, other pleadings, motions, and applications filed with a court.
- c. Any summons, notice, subpoena, or other process and proofs of publication.
- d. Transcripts of proceedings before the court.
- e. Findings, judgments, decrees and orders of the court.

39. "*Parent*" means a biological or adoptive mother or father of a child but does not include a mother or father whose parental rights have been terminated.

40. "*Peace officer*" means a law enforcement officer or a person designated as a peace officer by a provision of the Code.

41. "*Petition*" means a pleading the filing of which initiates formal judicial proceedings in the juvenile court.

42. "*Physical abuse or neglect*" or "*abuse or neglect*" means any nonaccidental physical injury suffered by a child as the result of the acts or omissions of the child's parent, guardian or custodian or other person legally responsible for the child.

43. "*Predisposition investigation*" means an investigation conducted for the purpose of collecting information relevant to the court's fashioning of an appropriate disposition of a delinquency case over which the court has jurisdiction.

44. "*Predisposition report*" is a report furnished to the court which contains the information collected during a predisposition investigation.

45. "*Probation*" means a legal status which is created by a dispositional order of the court in a case

where a child has been adjudicated to have committed a delinquent act, which exists for a specified period of time, and which places the child under the supervision of a juvenile court officer or other person or agency designated by the court. The probation order may require a child to comply with specified conditions imposed by the court concerning conduct and activities, subject to being returned to the court for violation of those conditions.

46. "*Registry*" means the central registry for child abuse information as established under chapter 235A.

47. "*Residual parental rights and responsibilities*" means those rights and responsibilities remaining with the parent after transfer of legal custody or guardianship of the person of the child. These include but are not limited to the right of visitation, the right to consent to adoption, and the responsibility for support.

48. "*Secure facility*" means a physically restricting facility in which children adjudicated to have committed a delinquent act may be placed pursuant to a dispositional order of the court.

49. "*Sexual abuse*" means the commission of a sex offense as defined by the penal law.

50. "*Shelter care*" means the temporary care of a child in a physically unrestricting facility at any time between a child's initial contact with juvenile authorities and the final judicial disposition of the child's case.

51. "*Shelter care hearing*" means a hearing at which the court determines whether it is necessary to place or retain a child in shelter care.

52. "*Social investigation*" means an investigation conducted for the purpose of collecting information relevant to the court's fashioning of an appropriate disposition of a child in need of assistance case over which the court has jurisdiction.

53. "*Social report*" means a report furnished to the court which contains the information collected during a social investigation.

54. "*Taking into custody*" means an act which would be governed by the laws of arrest under the criminal code if the subject of the act were an adult. The taking into custody of a child is subject to all constitutional and statutory protections which are afforded an adult upon arrest.

55. "*Termination hearing*" means a hearing held to determine whether the court should terminate a parent-child relationship.

56. "*Termination of the parent-child relationship*" means the divestment by the court of the parent's and child's privileges, duties and powers with respect to each other.

57. "*Voluntary placement*" means a foster care placement in which the department provides foster care services to a child according to a signed placement agreement between the department and the child's parent or guardian.

58. "*Waiver hearing*" means a hearing at which the court determines whether it shall waive its jurisdiction over a child alleged to have committed a

delinquent act so that the state may prosecute the child as if the child were an adult.

95 Acts, ch 108, §16; 95 Acts, ch 147, §3; 95 Acts, ch 182, §1, 2, 6; 95 Acts, ch 191, §7

Pilot kinship care project to enhance family involvement in case permanency plans for children removed from their homes; 95 Acts, ch 205, §10
 Subsection 4, unnumbered paragraph 1 amended
 Subsection 4, NEW paragraph g
 Subsection 6, paragraph o stricken and rewritten
 Subsections 10 and 23 amended
 Subsection 22, unnumbered paragraph 1 amended

232.8 Jurisdiction.

1. *a.* The juvenile court has exclusive original jurisdiction in proceedings concerning a child who is alleged to have committed a delinquent act unless otherwise provided by law, and has exclusive original jurisdiction in proceedings concerning an adult who is alleged to have committed a delinquent act prior to having become an adult, and who has been transferred to the jurisdiction of the juvenile court pursuant to an order under section 803.5.

b. Violations by a child of provisions of chapter 321, 321G, 453A, 461A, 461B, 462A, 481A, 481B, 483A, 484A, or 484B, which would be simple misdemeanors if committed by an adult, and violations by a child of county or municipal curfew or traffic ordinances, are excluded from the jurisdiction of the juvenile court and shall be prosecuted as simple misdemeanors as provided by law. A child convicted of a violation excluded from the jurisdiction of the juvenile court under this paragraph shall be sentenced pursuant to section 805.8, where applicable, and pursuant to section 903.1, subsection 3, for all other violations.

c. Violations by a child, age sixteen or older, which subject the child to the provisions of section 124.401, subsection 1, paragraph "e" or "f", or violations of section 723A.2 which involve a violation of chapter 724, or violation of chapter 724 which constitutes a felony, or violations which constitute a forcible felony are excluded from the jurisdiction of the juvenile court and shall be prosecuted as otherwise provided by law unless the court transfers jurisdiction of the child to the juvenile court upon motion and for good cause. A child over whom jurisdiction has not been transferred to the juvenile court, and who is convicted of a violation excluded from the jurisdiction of the juvenile court under this paragraph, shall be sentenced pursuant to section 124.401B, 902.9, or 903.1.

d. The juvenile court shall have jurisdiction in proceedings commenced against a child pursuant to section 236.3 over which the district court has waived its jurisdiction. The juvenile court shall hear the action in the manner of an adjudicatory hearing under section 232.47, subject to the following:

(1) The juvenile court shall abide by the provisions of sections 236.4 and 236.6 in holding hearings and making a disposition.

(2) The plaintiff is entitled to proceed pro se under sections 236.3A and 236.3B.

2. A case involving a person charged in a court other than the juvenile court with the commission of

a public offense not exempted by law from the jurisdiction of the juvenile court and who is within the provisions of subsection 1 of this section shall immediately be transferred to the juvenile court. The transferring court shall order a transfer and shall forward the transfer order together with all papers, documents and a transcript of all testimony filed or admitted into evidence in connection with the case to the clerk of the juvenile court. The jurisdiction of the juvenile court shall attach immediately upon the signing of an order of transfer. From the time of transfer, the custody, shelter care and detention of the person alleged to have committed a delinquent act shall be in accordance with the provisions of this chapter and the case shall be processed in accordance with the provisions of this chapter.

3. The juvenile court, after a hearing and in accordance with the provisions of section 232.45, may waive jurisdiction of a child alleged to have committed a public offense so that the child may be prosecuted as an adult for such offense in another court. If the child pleads guilty or is found guilty of a public offense in another court of this state that court may, with the consent of the child, defer judgment and without regard to restrictions placed upon deferred judgments for adults, place the child on probation for a period not less than one year upon such conditions as it may require. Upon fulfillment of the conditions of probation the child shall be discharged without entry of judgment.

4. In a proceeding concerning a child who is alleged to have committed a second delinquent act or a second violation excluded from the jurisdiction of the juvenile court, the court or the juvenile court shall determine whether there is reason to believe that the child regularly abuses alcohol or other controlled substance and may be in need of treatment. If the court so determines, the court shall advise appropriate juvenile authorities and refer such offenders to the juvenile court for disposition pursuant to section 232.52A.

5. Nothing in this chapter shall be interpreted as affecting the statutory limitations on prosecutions for murder in the first or second degree.

6. The supreme court shall prescribe rules under section 602.4202 to resolve jurisdictional and venue issues when juveniles who are placed in another court's jurisdiction are alleged to have committed subsequent delinquent acts.

95 Acts, ch 180, §2; 95 Acts, ch 191, §8
 Subsection 1, NEW paragraphs c and d

232.22 Placement in detention.

1. A child shall not be placed in detention unless one of the following conditions is met:

a. The child is being held under warrant for another jurisdiction.

b. The child is an escapee from a juvenile correctional or penal institution.

c. There is probable cause to believe that the child has violated conditions of release imposed under section 232.44, subsection 5, paragraph "b", 232.52,

or 232.54 and there is a substantial probability that the child will run away or otherwise be unavailable for subsequent court appearance.

d. There is probable cause to believe the child has committed a delinquent act, and one of the following conditions is met:

(1) There is a substantial probability that the child will run away or otherwise be unavailable for subsequent court appearance.

(2) There is a serious risk that the child if released may commit an act which would inflict serious bodily harm on the child or on another.

(3) There is a serious risk that the child if released may commit serious damage to the property of others.

e. There is probable cause to believe that the child has committed a delinquent act involving possession with intent to deliver any of the following controlled substances:

(1) A mixture or substance containing cocaine base, also known as crack cocaine, and if the act was committed by an adult, it would be a violation of section 124.401, subsection 1, paragraph "a", subparagraph (3), paragraph "b", subparagraph (3), or paragraph "c", subparagraph (3).

(2) A mixture or substance containing cocaine, its salts, optical and geometric isomers, and salts of isomers, and if the act was committed by an adult, it would be a violation of section 124.401, subsection 1, paragraph "a", subparagraph (2), subparagraph subdivision (b), paragraph "b", subparagraph (2), subparagraph subdivision (b), or paragraph "c", subparagraph (2), subparagraph subdivision (b).

(3) A mixture or substance containing methamphetamine, its salts, isomers, and salts of isomers, and if the act was committed by an adult, it would be a violation of section 124.401, subsection 1, paragraph "c", subparagraph (6).

f. A dispositional order has been entered under section 232.52 placing the child in secure custody in a facility defined in subsection 2, paragraph "a" or "b".

g. There is probable cause to believe that the child has committed a delinquent act which would be domestic abuse under chapter 236 or a domestic abuse assault under section 708.2A if committed by an adult.

2. Except as provided in subsection 6, a child may be placed in detention as provided in this section in one of the following facilities only:

a. A juvenile detention home.

b. Any other suitable place designated by the court other than a facility under paragraph "c".

c. A room in a facility intended or used for the detention of adults if there is probable cause to believe that the child has committed a delinquent act which if committed by an adult would be a felony, or aggravated misdemeanor under section 708.2 or 709.11, a serious or aggravated misdemeanor under section 321J.2, or a violation of section 123.46, and if all of the following apply:

(1) The child is at least fourteen years of age.

(2) The child has shown by the child's conduct, habits, or condition that the child constitutes an immediate and serious danger to another or to the property of another, and a facility or place enumerated in paragraph "a" or "b" is unavailable, or the court determines that the child's conduct or condition endangers the safety of others in the facility.

(3) The facility has an adequate staff to supervise and monitor the child's activities at all times.

(4) The child is confined in a room entirely separated from detained adults, is confined in a manner which prohibits communication with detained adults, and is permitted to use common areas of the facility only when no contact with detained adults is possible.

However, if the child is to be detained for a violation of section 123.46 or section 321J.2, placement in a facility pursuant to this paragraph shall be made only after an attempt has been made to notify the parents or legal guardians of the child and request that the parents or legal guardians take custody of the child. If the parents or legal guardians cannot be contacted, or refuse to take custody of the child, an attempt shall be made to place the child in another facility, including but not limited to a local hospital or shelter care facility. Also, a child detained for a violation of section 123.46 or section 321J.2 pursuant to this paragraph shall only be detained in a facility with adequate staff to provide continuous visual supervision of the child.

d. A place used for the detention of children prior to an adjudicatory hearing may also be used for the detention of a child awaiting disposition to a placement under section 232.52, subsection 2, paragraph "e" while the adjudicated child is awaiting transfer to the disposition placement.

3. A child shall not be held in a facility under subsection 2, paragraph "a" or "b" for a period in excess of twenty-four hours without an oral or written court order authorizing the detention. When the detention is authorized by an oral court order, the court shall enter a written order before the end of the next day confirming the oral order and indicating the reasons for the order.

4. A child shall not be detained in a facility under subsection 2, paragraph "c" for a period of time in excess of six hours without the oral or written order of a judge or a magistrate authorizing the detention. A judge or magistrate may authorize detention in a facility under subsection 2, paragraph "c" for a period of time in excess of six hours but less than twenty-four hours, excluding weekends and legal holidays, but only if all of the following occur or exist:

a. The facility serves a geographic area outside a standard metropolitan statistical area as determined by the United States census bureau.

b. The court determines that an acceptable alternative placement does not exist pursuant to criteria developed by the department of human services.

c. The facility has been certified by the department of corrections as being capable of sight and sound separation pursuant to this section and section 356.3.

d. The child is awaiting an initial hearing before the court pursuant to section 232.44.

The restrictions contained in this subsection relating to the detention of a child in a facility under subsection 2, paragraph "c" do not apply if the court has waived its jurisdiction over the child for the alleged commission of a felony offense pursuant to section 232.45.

5. An adult within the jurisdiction of the court under section 232.8, subsection 1, who has been placed in detention, is not bailable under chapter 811. If such an adult is detained in a room in a facility intended or used for the detention of adults, the adult shall be confined in a room entirely separated from adults not within the jurisdiction of the court under section 232.8, subsection 1.

6. If the court has waived its jurisdiction over the child for the alleged commission of a forcible felony offense pursuant to section 232.45 or 232.45A, and there is a serious risk that the child may commit an act which would inflict serious bodily harm on another person, the child may be held in the county jail, notwithstanding section 356.3. However, wherever possible the child shall be held in sight and sound separation from adult offenders. A child held in the county jail under this subsection shall have all the rights of adult postarrest or pretrial detainees.

95 Acts, ch 180, §3; 95 Acts, ch 191, §9
Subsection 1, NEW paragraphs f and g

232.28 Intake.

1. Any person having knowledge of the facts may file a complaint with the court or its designee alleging that a child has committed a delinquent act. A written record shall be maintained of any oral complaint received.

2. The court or its designee shall refer the complaint to an intake officer who shall consult with law enforcement authorities having knowledge of the facts and conduct a preliminary inquiry to determine what action should be taken.

3. In the course of a preliminary inquiry, the intake officer may:

a. Interview the complainant, victim or witnesses of the alleged delinquent act.

b. Check existing records of the court, law enforcement agencies and public records of other agencies.

c. Hold conferences with the child and the child's parent or parents, guardian or custodian for the purpose of interviewing them and discussing the disposition of the complaint in accordance with the requirements set forth in subsection 8.

d. Examine any physical evidence pertinent to the complaint.

e. Interview such persons as are necessary to determine whether the filing of a petition would be in the best interests of the child and the community as provided in section 232.35, subsections 2 and 3.

4. Any additional inquiries may be made only with the consent of the child and the child's parent or parents, guardian or custodian.

5. Participation of the child and the child's parent or parents, guardian or custodian in a conference with an intake officer shall be voluntary, and they shall have the right to refuse to participate in such conference. At such conference the child shall have the right to the assistance of counsel in accordance with section 232.11 and the right to remain silent when questioned by the intake officer.

6. The intake officer, after consultation with the county attorney when necessary, shall determine whether the complaint is legally sufficient for the filing of a petition. A complaint shall be deemed legally sufficient for the filing of a petition if the facts as alleged are sufficient to establish the jurisdiction of the court and probable cause to believe that the child has committed a delinquent act. If the intake officer determines that the complaint is legally sufficient to support the filing of a petition, the officer shall determine whether the interests of the child and the public will best be served by the dismissal of the complaint, the informal adjustment of the complaint, or the filing of a petition.

7. If the intake officer determines that the complaint is not legally sufficient for the filing of a petition or that further proceedings are not in the best interests of the child or the public, the intake officer shall dismiss the complaint.

8. If the intake officer determines that the complaint is legally sufficient for the filing of a petition and that an informal adjustment of the complaint is in the best interests of the child and the community, the officer may make an informal adjustment of the complaint in accordance with section 232.29.

9. If the intake officer determines that the complaint is legally sufficient for the filing of a petition and that the filing of a petition is in the best interests of the child and the public, the officer shall request the county attorney to file a petition in accordance with section 232.35.

10. A complaint filed with the court or its designee pursuant to this section which alleges that a child has committed a delinquent act which if committed by an adult would be an aggravated misdemeanor or a felony shall be a public record and shall not be confidential under section 232.147. The court, its designee, or law enforcement officials are authorized to release the complaint, including the identity of the child named in the complaint.

95 Acts, ch 191, §10
Subsection 10 amended

232.29 Informal adjustment.

1. The informal adjustment of a complaint is a permissible disposition of a complaint at intake subject to the following conditions:

a. The child has admitted the child's involvement in a delinquent act.

b. The intake officer shall advise the child and the child's parent, guardian or custodian that they have the right to refuse an informal adjustment of the complaint and demand the filing of a petition and a formal adjudication.

c. Any informal adjustment agreement shall be entered into voluntarily and intelligently by the child with the advice of the child's attorney, or by the child with the consent of a parent, guardian, or custodian if the child is not represented by counsel.

d. The terms of such agreement shall be clearly stated in writing and signed by all parties to the agreement and a copy of this agreement shall be given to the child; the counsel for the child; the parent, guardian or custodian; and the intake officer, who shall retain the copy in the case file.

e. An agreement providing for the supervision of a child by a juvenile court officer or the provision of intake services shall not exceed six months.

f. An agreement providing for the referral of a child to a public or private agency for services shall not exceed six months.

g. The child and the child's parent, guardian or custodian shall have the right to terminate such agreement at any time and to request the filing of a petition and a formal adjudication.

h. If an informal adjustment of a complaint has been made, a petition based upon the events out of which the original complaint arose may be filed only during the period of six months from the date the informal adjustment agreement was entered into. If a petition is filed within this period the child's compliance with all proper and reasonable terms of the agreement shall be grounds for dismissal of the petition by the court.

i. The person performing the duties of intake officer shall file a report at least annually with the court listing the number of informal adjustments made during the reporting time, the conditions imposed in each case, the number of informal adjustments resulting in dismissal without the filing of a petition, and the number of informal adjustments resulting in the filing of a petition upon the original complaint.

2. An informal adjustment agreement may prohibit a child from driving a motor vehicle for a specified period of time or under specific circumstances, require the child to perform a work assignment of value to the state or to the public, or require the child to make restitution consisting of a monetary payment to the victim or a work assignment directly of value to the victim. The juvenile court officer shall notify the state department of transportation of the informal adjustment prohibiting the child from driving.

3. The person performing the duties of intake officer shall notify the superintendent of the school district or the superintendent's designee, or the authorities in charge of the nonpublic school which the child attends, of any informal adjustment regarding the child, fourteen years of age or older, for an act which would be an aggravated misdemeanor or felony if committed by an adult.

4. An informal adjustment agreement regarding a child who has been placed in detention under section 232.22, subsection 1, paragraph "g", may include a provision that the child voluntarily partici-

pate in a batterers' treatment program under section 708.2B.

95 Acts, ch 180, §4; 95 Acts, ch 191, §11
NEW subsections 3 and 4

232.37 Summons, notice, subpoenas and service — order for removal.

1. After a petition has been filed the court shall set a time for an adjudicatory hearing and unless the parties named in subsection 2 voluntarily appear, shall issue a summons requiring the child to appear before the court at a time and place stated and requiring the person who has custody or control of the child to appear before the court and to bring the child with the person at that time. The summons shall attach a copy of the petition and shall give notification of the right to counsel provided for in section 232.11.

2. Notice of the pendency of the case shall be served upon the known parents, guardians or legal custodians of a child if these persons are not summoned to appear as provided in subsection 1. Notice shall also be served upon the child and upon the child's guardian ad litem, if any. The notice shall attach a copy of the petition and shall give notification of the right to counsel provided for in section 232.11.

3. Upon request of the child who is identified in the petition as a party to the proceeding, the child's parent, guardian or custodian, a county attorney or on the court's own motion, the court or the clerk of the court shall issue subpoenas requiring the attendance and testimony of witnesses and production of papers at any hearing under this division.

4. Service of summons or notice shall be made personally by the delivery of a copy of the summons or notice to the person being served. If the court determines that personal service of a summons or notice is impracticable, the court may order service by certified mail addressed to the last known address. Service of summons or notice shall be made not less than five days before the time fixed for hearing. Service of summons, notice, subpoenas or other process, after an initial valid summons or notice, shall be made in accordance with the rules of the court governing such service in civil actions.

5. If a person personally served with a summons or subpoena fails without reasonable cause to appear or to bring the child, the person may be proceeded against for contempt of court or the court may issue an order for the arrest of such person or both the arrest of the person and the taking into custody of the child.

6. The court may issue an order for the removal of the child from the custody of the child's parent, guardian or custodian when there exists an immediate threat that the parent, guardian or custodian will flee the state with the child, or when it appears that the child's immediate removal is necessary to avoid imminent danger to the child's life or health.

95 Acts, ch 92, §1
Subsection 4 amended

232.44 Detention or shelter care hearing — release from detention upon change of circumstance.

1. A hearing shall be held within forty-eight hours, excluding Saturdays, Sundays, and legal holidays, of the time of the child's admission to a shelter care facility, and within twenty-four hours, excluding Saturdays, Sundays, and legal holidays, of the time of a child's admission to a detention facility. If the hearing is not held within the time specified, the child shall be released from shelter care or detention. Prior to the hearing a petition shall be filed, except where the child is already under the supervision of a juvenile court under a prior judgment.

If the child is placed in a detention facility in a county other than the county in which the child resides or in which the delinquent act allegedly occurred but which is within the same judicial district, the hearing may take place in the county in which the detention facility is located. The child shall appear in person at the hearing required by this subsection.

2. The county attorney or a juvenile court officer may apply for a hearing at any time after the petition is filed to determine whether the child who is the subject of the petition should be placed in detention or shelter care. The court may upon the application or upon its own motion order such hearing.

3. A notice shall be served upon the child, the child's attorney, the child's guardian ad litem if any, and the child's known parent, guardian, or custodian not less than twelve hours before the time the hearing is scheduled to begin and in a manner calculated fairly to apprise the parties of the time, place, and purpose of the hearing. If the court finds that there has been reasonably diligent effort to give notice to a parent, guardian, or custodian and that the effort has been unavailing, the hearing may proceed without the notice having been served.

4. At the hearing the court shall admit only testimony and other evidence relevant to the determination of whether there is probable cause to believe the child has committed the act as alleged in the petition and to the determination of whether the placement of the child in detention or shelter care is authorized under section 232.21 or 232.22. Any written reports or records made available to the court at the hearing shall be made available to the parties. A copy of the petition shall be given to each of the parties at or before the hearing.

5. The court shall find release to be proper under the following circumstances:

a. If the court finds that there is not probable cause to believe that the child is a child within the jurisdiction of the court under this chapter, it shall release the child and dismiss the petition.

b. If the court finds that detention or shelter care is not authorized under section 232.21 or 232.22, or is authorized but not warranted in a particular case, the court shall order the child's release, and in so doing, may impose one or more of the following conditions:

(1) Place the child in the custody of a parent, guardian or custodian under that person's supervi-

sion, or under the supervision of an organization which agrees to supervise the child.

(2) Place restrictions on the child's travel, association, or place of residence during the period of release.

(3) Impose any other condition deemed reasonably necessary and consistent with the grounds for detaining children specified in section 232.21 or 232.22, including a condition requiring that the child return to custody as required.

c. An order releasing a child on conditions specified in this section may be amended at any time to impose equally or less restrictive conditions. The order may be amended to impose additional or more restrictive conditions, or to revoke the release, if the child has failed to conform to the conditions originally imposed.

6. If the court finds that there is probable cause to believe that the child is within the jurisdiction of the court under this chapter and that full-time detention or shelter care is authorized under section 232.21 or 232.22, it may issue an order authorizing either shelter care or detention until the adjudicatory hearing is held or for a period not exceeding seven days whichever is shorter.

7. If a child held in shelter care or detention by court order has not been released after a detention hearing or has not appeared at an adjudicatory hearing before the expiration of the order of detention, an additional hearing shall automatically be scheduled for the next court day following the expiration of the order. The child, the child's counsel, the child's guardian ad litem, and the child's parent, guardian or custodian shall be notified of this hearing not less than twenty-four hours before the hearing is scheduled to take place. The hearing required by this subsection may be held by telephone conference call.

8. A child held in a detention or shelter care facility under order of court after a hearing may be released upon a showing that a change of circumstances makes continued detention unnecessary.

9. A written request for the release of the child, setting forth the changed circumstances, may be filed by the child, by a responsible adult on the child's behalf, by the child's custodian, or by the juvenile court officer.

10. Based upon the facts stated in the request for release the court may grant or deny the request without a hearing, or may order that a hearing be held at a date, time and place determined by the court. Notice of the hearing shall be given to the child and the child's custodian or counsel. Upon receiving evidence at the hearing, the court may release the child to the child's custodian or other suitable person, or may deny the request and remand the child to the detention or shelter care facility.

11. This section does not apply to a child placed in accordance with section 232.78, 232.79, or 232.95.

95 Acts, ch 67, §15
Subsection 7 amended

232.45A Waiver to and conviction by district court — processing.

1. Once jurisdiction over a child has been waived

by the juvenile court as provided in section 232.45, for the alleged commission of a felony, and once a conviction is entered by the district court, for all other offenses, the clerk of the juvenile court shall immediately send a certified copy of the findings required by section 232.45, subsection 8, and the judgment of conviction, as applicable, to the department of public safety. The department shall maintain a file on each child who has previously been waived to or waived to and convicted by the district court in a prosecution as an adult. The file shall be accessible by law enforcement officers on a twenty-four hour per day basis.

2. Once a child sixteen years of age or older has been waived to and convicted of an aggravated misdemeanor or a felony in the district court, all criminal proceedings against the child for any aggravated misdemeanor or felony occurring subsequent to the date of the conviction of the child shall begin in district court, notwithstanding sections 232.8 and 232.45. A copy of the findings required by section 232.45, subsection 8, shall be made a part of the record in the district court proceedings.

3. If proceedings against a child for an aggravated misdemeanor or a felony who has previously been waived to and convicted of an aggravated misdemeanor or a felony in the district court are mistakenly begun in the juvenile court, the matter shall be transferred to district court upon the discovery of the prior waiver and conviction, notwithstanding sections 232.8 and 232.45.

95 Acts, ch 191, §12
Section amended

232.46 Consent decree.

1. At any time after the filing of a petition and prior to entry of an order of adjudication pursuant to section 232.47, the court may suspend the proceedings on motion of the county attorney or the child's counsel, enter a consent decree, and continue the case under terms and conditions established by the court. These terms and conditions may include prohibiting a child from driving a motor vehicle for a specified period of time or under specific circumstances, or the supervision of the child by a juvenile court officer or other agency or person designated by the court, and may include the requirement that the child perform a work assignment of value to the state or to the public or make restitution consisting of a monetary payment to the victim or a work assignment directly of value to the victim. The court shall notify the state department of transportation of an order prohibiting the child from driving.

2. A consent decree entered regarding a child placed in detention under section 232.22, subsection 1, paragraph "g", shall require the child to attend a batterers' treatment program under section 708.2B. The second time the child fails to attend the batterers' treatment as required by the consent decree shall result in the decree being vacated and proceedings commenced under section 232.47.

3. A consent decree shall not be entered unless the child and the child's parent, guardian or custo-

dian is informed of the consequences of the decree by the court and the court determines that the child has voluntarily and intelligently agreed to the terms and conditions of the decree. If the county attorney objects to the entry of a consent decree, the court shall proceed to determine the appropriateness of entering a consent decree after consideration of any objections or reasons for entering such a decree.

4. A consent decree shall remain in force for six months unless the child is sooner discharged by the court or by the juvenile court officer or other agency or person supervising the child. Upon application of a juvenile court officer or other agency or person supervising the child made prior to the expiration of the decree and after notice and hearing, or upon agreement by the parties, a consent decree may be extended for an additional six months by order of the court.

5. When a child has complied with the express terms and conditions of the consent decree for the required amount of time or until earlier dismissed as provided in subsection 4, the original petition may not be reinstated. However, failure to so comply may result in the child's being thereafter held accountable as if the consent decree had never been entered.

6. A child who is discharged or who completes a period of continuance without the reinstatement of the original petition shall not be proceeded against in any court for a delinquent act alleged in the petition.

95 Acts, ch 180, §5
NEW subsection 2 and former subsections 2-5 renumbered as 3-6

232.52 Disposition of child found to have committed a delinquent act.

1. Pursuant to a hearing as provided in section 232.50, the court shall enter the least restrictive dispositional order appropriate in view of the seriousness of the delinquent act, the child's culpability as indicated by the circumstances of the particular case, the age of the child and the child's prior record. The order shall specify the duration and the nature of the disposition, including the type of residence or confinement ordered and the individual, agency, department or facility in whom custody is vested.

2. The dispositional orders which the court may enter subject to its continuing jurisdiction are as follows:

a. An order prescribing one or more of the following:

(1) A work assignment of value to the state or to the public.

(2) Restitution consisting of monetary payment or a work assignment of value to the victim.

(3) If the child is fourteen years of age or older, restitution consisting of monetary payment or a work assignment of value to the county or to the public for fees of attorneys appointed to represent the child at public expense pursuant to section 232.11.

(4) The suspension of the motor vehicle license or operating privilege of the child for the commission of one or more delinquent acts which are a violation of section 123.46, section 123.47 regarding the pur-

chase or attempt to purchase of alcoholic beverages, or chapter 124, or two or more delinquent acts which are a violation of section 123.47 regarding the possession of alcoholic beverages for a period of one year. The child may be issued a temporary restricted license or school license if the child is otherwise eligible.

(5) The suspension of the motor vehicle license or operating privilege of the child for a period not to exceed one year. The order shall state whether a work permit may or shall not be issued to the child.

An order under paragraph "a" may be the sole disposition or may be included as an element in other dispositional orders.

b. An order placing the child on probation and releasing the child to the child's parent, guardian or custodian.

c. An order providing special care and treatment required for the physical, emotional or mental health of the child, and

(1) Placing the child on probation or other supervision; and

(2) If the court deems appropriate, ordering the parent, guardian, or custodian to reimburse the county for any costs incurred as provided in section 232.141, subsection 1 or to otherwise pay or provide for such care and treatment.

A parent or guardian may be required by the juvenile court to participate in educational or treatment programs as part of a probation plan if the court determines it to be in the best interest of the child. A parent or guardian who does not participate in the probation plan when required to do so by the court may be held in contempt.

d. An order transferring the legal custody of the child, subject to the continuing jurisdiction of the court for purposes of section 232.54, to one of the following:

(1) An adult relative or other suitable adult and placing the child on probation.

(2) A child placing agency or other suitable private agency or facility which is licensed or otherwise authorized by law to receive and provide care for children and placing the child on probation or other supervision.

(3) The department of human services for purposes of foster care and prescribing the type of placement which will serve the best interests of the child and the means by which the placement shall be monitored by the court. The court shall consider ordering placement in family foster care as an alternative to group foster care.

e. An order transferring the guardianship of the child, subject to the continuing jurisdiction and custody of the court for the purposes of section 232.54, to the director of the department of human services for purposes of placement in the state training school or other facility, provided that the child is at least twelve years of age and the court finds the placement to be in the best interests of the child or necessary for the protection of the public, and that the child has been found to have committed an act which is a

forcible felony, as defined in section 702.11, or a felony violation of section 124.401 or chapter 707, or the court finds any three of the following conditions exist:

(1) The child is at least fifteen years of age and the court finds the placement to be in the best interests of the child or necessary to the protection of the public.

(2) The child has committed an act which is a crime against a person and which would be an aggravated misdemeanor or a felony if the act were committed by an adult.

(3) The child has previously been found to have committed a delinquent act.

(4) The child has previously been placed in a treatment facility outside the child's home.

f. An order committing the child to a mental health institute or other appropriate facility for the purpose of treatment of a mental or emotional condition after making findings pursuant to the standards set out for involuntary commitment in chapter 229.

g. An order placing a child in secure custody for not more than two days in a facility under section 232.22, subsection 2, paragraph "a" or "b".

h. In the case of a child adjudicated delinquent for an act which would be a violation of chapter 236, or section 708.2A if committed by an adult, an order requiring the child to attend a batterers' treatment program under section 708.2B.

2A. Notwithstanding subsection 2, the court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the regional plan for group foster care established pursuant to section 232.143 for the departmental region in which the court is located.

3. When the court enters an order placing a child on probation pursuant to this section, the court may in cases of change of residency transfer jurisdiction of the child to the juvenile court of the county where the child's residence is established. The court to which the jurisdiction of the child is transferred shall have the same powers with respect to the child as if the petition had originally been filed in that court.

4. When the court enters an order transferring the legal and physical custody of a child to an agency, facility, department or institution, the court shall transmit its order, its finding, and a summary of its information concerning the child to such agency, facility, department or institution.

5. If the court orders the transfer of custody of the child to the department of human services or other agency for placement, the department or agency responsible for the placement of the child shall submit a case permanency plan to the court and shall make every effort to return the child to the child's home as quickly as possible.

6. When the court orders the transfer of legal custody of a child pursuant to subsection 2, paragraphs "d", "e", or "f", the order shall state that reasonable efforts have been made to prevent or

eliminate the need for removal of the child from the child's home.

When the court orders the transfer of legal custody of a child pursuant to subsection 2, paragraph "d", and the child is sixteen years of age or older, the order shall specify the services needed to assist the child in preparing for the transition from foster care to independent living. If the child is interested in pursuing higher education, the plan shall provide for the child's participation in the college student aid commission's program of assistance in applying for federal and state aid under section 261.2.

7. If the court orders the transfer of the custody of the child to the department of human services or to another agency for placement in foster group care, the department or agency shall make every reasonable effort to place the child within the state, in the least restrictive setting available and in close proximity to the parents' home, consistent with the child's best interests and special needs, and shall consider the placement's proximity to the school in which the child is enrolled at the time of placement.

8. If a child has previously been adjudicated as a child in need of assistance, and a social worker or other caseworker from the department of human services has been assigned to work on the child's case, the court may order the department of human services to assign the same social worker or caseworker to work on any matters related to the child arising under this division.

9. *a.* Upon receipt of an application from the director of the department of human services, the court shall enter an order to temporarily transfer a child who has been placed in the state training school pursuant to subsection 2, paragraph "e", to a facility which has been designated to be an alternative placement site for the state training school, provided the court finds that all of the following conditions exist:

(1) There is insufficient time to file a motion and hold a hearing for a substitute dispositional order under section 232.54.

(2) Immediate removal of the child from the state training school is necessary to safeguard the child's physical or emotional health.

(3) That reasonable attempts to notify the parents, guardian ad litem, and attorney for the child have been made.

b. If the court finds the conditions in paragraph "a" exist and there is insufficient time to provide notice as required under rule of juvenile procedure 4.6, the court may enter an ex parte order temporarily transferring the child to the alternative placement site.

c. Within three days of the child's transfer, the director shall file a motion for a substitute dispositional order under section 232.54 and the court shall hold a hearing concerning the motion within fourteen days of the child's transfer.

232.54 Termination, modification, or vacation and substitution of dispositional order.

At any time prior to its expiration, a dispositional order may be terminated, modified, or vacated and another dispositional order substituted therefor only in accordance with the following provisions:

1. With respect to a dispositional order made pursuant to section 232.52, subsection 2, paragraph "a", "b" or "c" and upon the motion of a child, a child's parent or guardian, a child's guardian ad litem, a person supervising the child under a dispositional order, a county attorney, or upon its own motion, the court may terminate the order and discharge the child, modify the order, or vacate the order and substitute another order pursuant to the provisions of section 232.52. Notice shall be afforded all parties, and a hearing shall be held at the request of any party.

2. With respect to a dispositional order made pursuant to section 232.52, subsection 2, paragraphs "d", and "e", the court shall grant a motion of the person to whom custody has been transferred for termination of the order and discharge of the child, for modification of the order by imposition of less restrictive conditions, or for vacation of the order and substitution of a less restrictive order unless there is clear and convincing evidence that there has not been a change of circumstance sufficient to grant the motion. Notice shall be afforded all parties, and a hearing shall be held at the request of any party or upon the court's own motion.

3. With respect to a dispositional order made pursuant to section 232.52, subsection 2, paragraphs "d", or "e" or "f", the court shall grant a motion of a person or agency to whom custody has been transferred for modification of the order by transfer to an equally restrictive placement, unless there is clear and convincing evidence that there has not been a change of circumstance sufficient to grant the motion. Notice shall be afforded all parties, and a hearing shall be held at the request of any party or upon the court's own motion.

4. With respect to a dispositional order made pursuant to section 232.52, subsection 2, paragraphs "d", "e" or "f", the court may, after notice and hearing, either grant or deny a motion of the child, the child's parent or guardian, or the child's guardian ad litem, to terminate the order and discharge the child, to modify the order either by imposing less restrictive conditions or by transfer to an equally or less restrictive placement, or to vacate the order and substitute a less restrictive order. A motion may be made pursuant to this paragraph no more than once every six months.

5. With respect to a dispositional order made pursuant to section 232.52, subsection 2, paragraphs "d" and "e", the court may, after notice and a hearing at which there is presented clear and convincing evidence to support such an action, either grant or deny a motion by a county attorney or by a person or agency to whom custody has been transferred, to modify an order by imposing more restrictive condi-

95 Acts, ch 180, §6; 95 Acts, ch 191, §13, 14

Highly structured treatment-oriented programs; appropriation; 94 Acts, ch 1172, §69; 95 Acts, ch 205, §10

Subsection 2, paragraph a, NEW subparagraph (5)

Subsection 2, NEW paragraphs g and h

tions or to vacate the order and substitute a more restrictive order.

6. With respect to a temporary transfer order made pursuant to section 232.52, subsection 9, if the court finds that removal of a child from the state training school is necessary to safeguard the child's physical or emotional health and is in the best interests of the child, the court shall grant the director's motion for a substitute dispositional order to place the child in a facility which has been designated to be an alternative placement site for the state training school.

Notice requirements of this section shall be satisfied in the same manner as for adjudicatory hearings as provided in section 232.37 except that notice shall be waived regarding a person who was notified of the adjudicatory hearing and who failed to appear. At a hearing under this section all relevant and material evidence shall be admitted.

95 Acts, ch 92, §2

Unnumbered paragraph 2 amended

232.68 Definitions.

As used in sections 232.67 through 232.77 and 235A.12 through 235A.23, unless the context otherwise requires:

1. "*Child*" means any person under the age of eighteen years.

2. "*Child abuse*" or "*abuse*" means:

a. Any nonaccidental physical injury, or injury which is at variance with the history given of it, suffered by a child as the result of the acts or omissions of a person responsible for the care of the child.

b. Any mental injury to a child's intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior as the result of the acts or omissions of a person responsible for the care of the child, if the impairment is diagnosed and confirmed by a licensed physician or qualified mental health professional as defined in section 622.10.

c. The commission of a sexual offense with or to a child pursuant to chapter 709, section 726.2, or section 728.12, subsection 1, as a result of the acts or omissions of the person responsible for the care of the child. Notwithstanding section 702.5, the commission of a sexual offense under this paragraph includes any sexual offense referred to in this paragraph with or to a person under the age of eighteen years.

d. The failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing or other care necessary for the child's health and welfare when financially able to do so or when offered financial or other reasonable means to do so. A parent or guardian legitimately practicing religious beliefs who does not provide specified medical treatment for a child for that reason alone shall not be considered abusing the child, however this provision shall not preclude a court from ordering that medical service be provided to the child where the child's health requires it.

e. The acts or omissions of a person responsible for the care of a child which allow, permit, or encourage the child to engage in acts prohibited pursuant to section 725.1. Notwithstanding section 702.5, acts or omissions under this paragraph include an act or omission referred to in this paragraph with or to a person under the age of eighteen years.

f. An illegal drug is present in a child's body as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of the child which a reasonable and prudent person knew or should have known is likely to lead to the drug's presence in the child's body.

3. "*Confidential access to a child*" means access to a child, during an investigation of an alleged act of child abuse, who is alleged to be the victim of the child abuse. The access may be accomplished by interview, observation, or examination of the child. As used in this subsection:

a. "*Interview*" means the verbal exchange between the department investigator and the child for the purpose of developing information necessary to protect the child. A department investigator is not precluded from recording visible evidence of abuse.

b. "*Observation*" means direct physical viewing of a child under the age of four by the department investigator where the viewing is limited to the child's body other than the genitalia and pubes. "*Observation*" also means direct physical viewing of a child age four or older by the department investigator without touching the child or removing an article of the child's clothing, and doing so without the consent of the child's parent, custodian, or guardian. A department investigator is not precluded from recording evidence of abuse obtained as a result of a child's voluntary removal of an article of clothing without inducement by the investigator. However, if prior consent of the child's parent or guardian, or an ex parte court order, is obtained, "*observation*" may include viewing the child's unclad body other than the genitalia and pubes.

c. "*Examination*" means direct physical viewing, touching, and medically necessary manipulation of any area of the child's body by a physician licensed under chapter 148 or 150A.

4. "*Department*" means the state department of human services and includes the local, county and regional offices of the department.

5. "*Health practitioner*" includes a licensed physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, optometrist, podiatric physician, or chiropractor; a resident or intern in any of such professions; a licensed dental hygienist, a registered nurse or licensed practical nurse; a physician assistant; and an emergency medical care provider certified under section 147A.6.

6. "*Mental health professional*" means a person who meets the following requirements:

a. Holds at least a master's degree in a mental health field, including, but not limited to, psychology, counseling, nursing, or social work; or is licensed to practice medicine pursuant to chapter 148, 150, or 150A.

b. Holds a license to practice in the appropriate profession.

c. Has at least two years of postdegree experience, supervised by a mental health professional, in assessing mental health problems and needs of individuals used in providing appropriate mental health services for those individuals.

7. "Person responsible for the care of a child" means:

a. A parent, guardian, or foster parent.

b. A relative or any other person with whom the child resides and who assumes care or supervision of the child, without reference to the length of time or continuity of such residence.

c. An employee or agent of any public or private facility providing care for a child, including an institution, hospital, health care facility, group home, mental health center, residential treatment center, shelter care facility, detention center, or child care facility.

d. Any person providing care for a child, but with whom the child does not reside, without reference to the duration of the care.

8. "Registry" means the central registry for child abuse information established in section 235A.14.

95 Acts, ch 41, §24; 95 Acts, ch 108, §17; 95 Acts, ch 182, §7

See Code editor's note to §13B.8

Subsection 2, paragraph f amended

Subsection 5 amended

232.71 Duties of the department upon receipt of report.

1. If a report is determined to constitute a child abuse allegation, the department of human services shall promptly commence an appropriate investigation. The primary purpose of this investigation shall be the protection of the child named in the report. The department, within five working days of commencing the investigation, shall provide written notification of the investigation to the child's parents. However, if the department shows the court to the court's satisfaction that notification is likely to endanger the child or other persons, the court shall orally direct the department to withhold notification. Within one working day of issuing an oral directive, the court shall issue a written order restraining the notification. The department shall not reveal in the written notification to the parents or otherwise the identity of the reporter of child abuse during an investigation to a subject of a child abuse report listed in section 235A.15, subsection 2, paragraph "a". If a report is determined not to constitute a child abuse allegation, but a criminal act harming a child is alleged, the department shall immediately refer the matter to the appropriate law enforcement agency.

2. The investigation shall include:

a. Identification of the nature, extent and cause of the injuries, if any, to the child named in the report.

b. The identification of the person or persons responsible therefor.

c. The name, age and condition of other children in the same home as the child named in the report.

d. An evaluation of the home environment. If protective concerns are identified, the department shall evaluate the child named in the report and any other children in the same home as the parents or other persons responsible for their care.

e. An interview of the person alleged to have committed the child abuse, if the person's identity and location are known, to afford the person the opportunity to address the allegations of the child abuse report. The interview shall be conducted, or an opportunity for an interview shall be provided, prior to a determination of child abuse being made. The court may waive the requirement of the interview for good cause.

3. The investigation may, with the consent of the parent or guardian, include a visit to the home of the child named in the report and an interview or observation of the child may be conducted. If permission to enter the home to interview or observe the child is refused, the juvenile court or district court upon a showing of probable cause may authorize the person making the investigation to enter the home and interview or observe the child. The department may utilize a multidisciplinary team in investigations of child abuse.

4. Based on an investigation of alleged child abuse by an employee of a facility providing care to a child, the department shall notify the licensing authority for the facility, the governing body of the facility, and the administrator in charge of the facility of any of the following:

a. A violation of facility policy noted in the investigation.

b. An instance in which facility policy or lack of facility policy may have contributed to the alleged child abuse.

c. An instance in which general practice in the facility appears to differ from the facility's written policy.

The licensing authority, the governing body, and the administrator in charge of the facility shall take any lawful action which may be necessary or advisable to protect children residing in the facility.

5. a. The department of human services may request information from any person believed to have knowledge of a child abuse case. The county attorney, any law enforcement or social services agency in the state, and any mandatory reporter, whether or not the reporter made the specific child abuse report, shall cooperate and assist in the investigation upon the request of the department of human services. The county attorney and appropriate law enforcement agencies shall also take any other lawful action which may be necessary or advisable for the protection of the child.

b. If the department refers a child to a physician for a physical examination, the department shall contact the physician concerning the examination within twenty-four hours of making the referral. If the physician who performs the examination upon referral by the department reasonably believes the child has been abused, the physician shall report to

the department within twenty-four hours of performing the examination.

6. The investigation may include a visit to a facility providing care to the child named in the report or to any public or private school subject to the authority of the department of education where the child named in the report is located. The administrator of a facility, or a public or private school shall cooperate with the investigator by providing confidential access to the child named in the report for the purpose of interviewing the child, and shall allow the investigator confidential access to other children for the purpose of conducting interviews in order to obtain relevant information. The investigator may observe a child named in a report in accordance with the provisions of section 232.68, subsection 3, paragraph "b". A witness shall be present during an observation of a child. Any child age ten years of age or older can terminate contact with the investigator by stating or indicating the child's wish to discontinue the contact. The immunity granted by section 232.73 applies to acts or omissions in good faith of such administrators and their facilities or school districts for cooperating in an investigation and allowing confidential access to a child. The department may utilize a multidisciplinary team to conduct investigations of child abuse involving employees or agents of a facility providing care for a child.

7. The department, upon completion of its investigation, shall make a preliminary report of its investigation as required by subsection 2. A copy of this report shall be transmitted to juvenile court within four regular working days after the department initially receives the abuse report unless the juvenile court grants an extension of time for good cause shown. If the preliminary report is not a complete report, a complete report shall be filed within ten working days of the receipt of the abuse report, unless the juvenile court grants an extension of time for good cause shown. The department shall notify a subject of the report of the result of the investigation, of the subject's right to correct the information pursuant to section 235A.19, and of the procedures to correct the information. The juvenile court shall notify the registry of any action it takes with respect to a suspected case of child abuse.

8. The department of human services shall transmit a copy of the report of its investigation, including actions taken or contemplated, to the registry. The department of human services shall make periodic follow-up reports thereafter in a manner prescribed by the registry so that the registry is kept up-to-date and fully informed concerning the handling of a suspected case of child abuse.

9. The department of human services shall also transmit a copy of the report of its investigation to the county attorney. The county attorney shall notify the registry of any actions or contemplated actions with respect to a suspected case of child abuse so that the registry is kept up-to-date and fully informed concerning the handling of such a case.

10. Based on the investigation conducted pursuant to this section, the department shall offer to the family of any child believed to be the victim of abuse such services as are available and appear appropriate for either the child, the family, or both, if it is explained that the department has no legal authority to compel the family to accept the services.

11. If, upon completion of the investigation, the department of human services determines that the best interests of the child require juvenile court action, the department shall take the appropriate action to initiate such action under this chapter. The county attorney shall assist the county department of human services as provided under section 232.90, subsection 2.

12. The department of human services shall assist the juvenile court or district court during all stages of court proceedings involving a suspected child abuse case in accordance with the purposes of this chapter.

13. The department of human services shall provide for or arrange for and monitor services for abused children and their families on a voluntary basis or under a final or intermediate order of the juvenile court. The department shall adopt rules defining services which the local planning groups authorized to develop plans may recommend.

14. In every case involving child abuse which results in a child protective judicial proceeding, whether or not the proceeding arises under this chapter, a guardian ad litem shall be appointed by the court to represent the child in the proceedings. Before a guardian ad litem is appointed pursuant to this section, the court shall require the person responsible for the care of the child to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court deems that the person responsible for the care of the child is able to bear the cost of the guardian ad litem, the court shall so order. In cases where the person responsible for the care of the child is unable to bear the cost of the guardian ad litem, the expense shall be paid out of the county treasury.

15. If a fourth report is received from the same person who made three earlier unfounded reports which identified the same child as the abused child and the same person responsible for the child as the alleged abuser, the department may determine that the report is again unfounded due to the report's spurious or frivolous nature and may in its discretion terminate its investigation.

16. The department may request criminal history data from the department of public safety on any person believed to be responsible for an injury to a child which, if confirmed, would constitute child abuse. The department shall establish procedures for determining when a criminal history records check under this subsection is necessary.

17. In each county or multicounty area in which more than fifty child abuse reports are made per year, the department shall establish a multidisciplinary

team, as defined in section 235A.13, subsection 7. Upon the department's request, a multidisciplinary team shall assist the department in the assessment, diagnosis, and disposition of a child abuse report.

95 Acts, ch 147, §4
Subsection 1 amended

232.71A Child abuse assessment pilot projects.

1. The department shall develop an assessment-based approach to respond to child abuse reports in accordance with the provisions of this section. The assessment-based approach shall be utilized on a pilot project basis in not more than five areas of the state, each of which is at least the size of a departmental county cluster, selected by the department. The pilot projects shall be selected in a manner so the pilot projects are in both rural and urban areas.

2. Notwithstanding the provisions of sections 232.70 and 232.71, in the pilot project areas, the department's responsibilities in responding to a child abuse report shall be in accordance with this section.

3. Upon receipt of a child abuse report in a pilot project area, the department shall perform an assessment. The department shall commence the assessment within seventy-two hours of the receipt of the report. The primary purpose of the assessment shall be to protect the safety of the child named in the report. The secondary purpose of the assessment shall be to engage the child's family in services to enhance family strengths and to address needs.

4. An assessment is subject to the provisions of section 232.71 as though the department is performing an investigation under that section for all of the following:

a. Notification of a child's parents in accordance with section 232.71, subsection 1.

b. Interview of a person alleged to have committed the child abuse in accordance with section 232.71, subsection 2, paragraph "e".

c. Notification of a facility providing care to a child in accordance with section 232.71, subsection 4.

d. Request for information from any person believed to have knowledge of a child abuse case and referral of a child to a physician in accordance with section 232.71, subsection 5.

e. Confidential access to a child in accordance with section 232.71, subsection 6.

f. Requests for information from the department of public safety in accordance with section 232.71, subsection 16.

g. Establishment and usage of a multidisciplinary team in accordance with section 232.71, subsection 17.

5. A child abuse assessment shall be completed in writing within twenty-one calendar days of the receipt of the report. The assessment shall include a description of the child's condition, identification of the injury or risk to which the child was exposed, the circumstances which led to the injury or risk to the child, and the identity of any person alleged to be

responsible for the injury or risk to the child. In addition, the assessment shall identify the strengths and needs of the child, and of the child's parent, home, family, and community. Upon completion of the assessment, the department shall consult with the child's family in offering services to the child and the child's family to address strengths and needs identified in the assessment.

6. The department shall provide the county attorney with a written copy of any assessment which includes a recommendation for a juvenile or criminal court action or petition. The county attorney shall notify the department of any action taken concerning an assessment provided by the department.

7. Notwithstanding contrary provisions of sections 235A.13 to 235A.23, the following requirements shall apply to child abuse information in an assessment performed in accordance with this section:

a. If the department determines the child suffered significant injury or was placed in great risk of injury, the name of the child and the alleged perpetrator of the child abuse shall be placed in the central registry as a case of founded child abuse. Any of the following shall be considered to be an indicator that the child suffered significant injury or was placed in great risk of injury:

(1) The case was referred for juvenile or criminal court action as a result of the acts or omissions of the alleged perpetrator.

(2) In the opinion of a health practitioner or mental health professional, the injury to the child as a result of the acts or omission of the alleged perpetrator required or should have required medical or mental health treatment.

(3) The department determines in a subsequent assessment that the child suffered significant injury or was placed in great risk of injury due to the acts or omissions of the same alleged perpetrator.

b. In any other case, the child abuse information in an assessment shall not be placed in the central registry and notwithstanding chapter 22, the confidentiality of the information shall be maintained.

c. If information is placed in the central registry as a case of founded child abuse, all of the provisions of sections 235A.13 to 235A.23 which apply to a case of founded child abuse shall apply to a case of founded child abuse under this section.

8. The department shall implement the pilot projects by January 15, 1996. The department shall report to the governor and the general assembly concerning the pilot projects on or before February 29, 1996. The report shall include a description of successes and problems encountered in implementing the pilot projects. It is the intent of the general assembly to implement statewide an assessment-based approach to respond to child abuse reports commencing with the fiscal year beginning July 1, 1996.

95 Acts, ch 147, §5
Implementation; special protocol under certain circumstances; 95 Acts, ch 147, §9
NEW section

232.73 Medically relevant tests — immunity from liability — rules.

A person participating in good faith in the making of a report, photographs, or X rays, or in the performance of a medically relevant test pursuant to this chapter, or aiding and assisting in an investigation of a child abuse report pursuant to section 232.71, shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed. The person shall have the same immunity with respect to participation in good faith in any judicial proceeding resulting from the report or relating to the subject matter of the report.

As used in this section and section 232.77, “*medically relevant test*” means a test that produces reliable results of exposure to cocaine, heroin, amphetamine, methamphetamine, or other illegal drugs, or combinations or derivatives thereof, including a drug urine screen test. The Iowa department of public health, in consultation with the department of human services and the council on chemically exposed infants and children created in chapter 235C, shall adopt rules specifying minimum standards for reliable results of medically relevant tests. The rules shall include but are not limited to standards which minimize the incidence of false positive test results. The Iowa department of public health shall maintain a list of laboratories which are approved to perform medically relevant tests in accordance with the standards adopted in administrative rules.

95 Acts, ch 182, §8
Unnumbered paragraph 2 amended

232.88 Summons, notice, subpoenas and services.

After a petition has been filed the court shall issue and serve summons, notice, subpoenas, and other process in the same manner as for adjudicatory hearings in cases of juvenile delinquency as provided in section 232.37. In addition to the parties required to be provided notice under section 232.37, notice for any hearing under this division shall be provided to the agency, facility, institution, or person, including a foster parent, with whom a child has been placed for the purposes of foster care.

95 Acts, ch 182, §3
Section amended

232.91 Presence of parents, guardian ad litem, and others at hearings — additional parties.

1. Any hearings or proceedings under this division subsequent to the filing of a petition shall not take place without the presence of the child’s parent, guardian, custodian, or guardian ad litem in accordance with and subject to section 232.38. A parent without custody may petition the court to be made a party to proceedings under this division.

2. An agency, facility, institution, or person, including a foster parent, may petition the court to be made a party to proceedings under this division.

95 Acts, ch 182, §4
Section amended

232.102 Transfer of legal custody of child and placement.

1. After a dispositional hearing the court may enter an order transferring the legal custody of the child to one of the following for purposes of placement:

- a. A relative or other suitable person.
- b. A child placing agency or other suitable private agency, facility or institution which is licensed or otherwise authorized by law to receive and provide care for the child.
- c. The department of human services.

If the child is sixteen years of age or older, the order shall specify the services needed to assist the child in preparing for the transition from foster care to independent living.

1A. The court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the regional plan for group foster care established pursuant to section 232.143 for the departmental region in which the court is located.

2. After a dispositional hearing and upon the request of the department, the court may enter an order appointing the department as the guardian of an unaccompanied refugee child or of a child without parent or guardian.

3. After a dispositional hearing and upon written findings of fact based upon evidence in the record that an alternative placement set forth in subsection 1, paragraph “b”, has previously been made and is not appropriate the court may enter an order transferring the guardianship of the child for the purposes of subsection 8, to the director of human services for the purposes of placement in the Iowa juvenile home at Toledo.

4. a. Upon receipt of an application from the director of the department of human services, the court shall enter an order to temporarily transfer a child who has been placed in the Iowa juvenile home at Toledo pursuant to subsection 3, to a facility which has been designated to be an alternative placement site for the juvenile home, provided the court finds that all of the following conditions exist:

(1) There is insufficient time to file a motion and hold a hearing for a new dispositional order under section 232.103.

(2) Immediate removal of the child from the juvenile home is necessary to safeguard the child’s physical or emotional health.

(3) That reasonable attempts to notify the parents, guardian ad litem, and attorney for the child have been made.

b. If the court finds the conditions in paragraph “a” exist and there is insufficient time to provide notice as required under rule of juvenile procedure 4.6, the court may enter an ex parte order temporarily transferring the child to the alternative placement site.

c. Within three days of the child’s transfer, the director shall file a motion for a new dispositional order under section 232.103 and the court shall hold

a hearing concerning the motion within fourteen days of the child's transfer.

5. Whenever possible the court should permit the child to remain at home with the child's parent, guardian or custodian. Custody of the child should not be transferred unless the court finds there is clear and convincing evidence that:

a. The child cannot be protected from physical abuse without transfer of custody; or

b. The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

The order shall, in addition, contain a statement that removal from the home is the result of a determination that continuation therein would be contrary to the welfare of the child, and that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home.

6. The child shall not be placed in the state training school.

7. In any order transferring custody to the department or an agency, or in orders pursuant to a custody order, the court shall specify the nature and category of disposition which will serve the best interests of the child, and shall prescribe the means by which the placement shall be monitored by the court. If the court orders the transfer of the custody of the child to the department of human services or other agency for placement, the department or agency shall submit a case permanency plan to the court and shall make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interest of the child. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the department or agency shall consider placing the child in the same licensed foster care facility. If the court orders the transfer of custody to a relative or other suitable person, the court may direct the department or other agency to provide services to the child's parent, guardian or custodian in order to enable them to resume custody of the child. If the court orders the transfer of custody to the department of human services or to another agency for placement in foster group care, the department or agency shall make every reasonable effort to place the child within Iowa, in the least restrictive setting available, and in close proximity to the parents' home, consistent with the child's best interests and special needs, and shall consider the placement's proximity to the school in which the child is enrolled at the time of placement.

8. An agency, facility, institution, or person to whom custody of the child has been transferred pursuant to this section shall file a written report with the court at least every six months concerning the status and progress of the child. The court shall hold a periodic dispositional review hearing for each child in placement pursuant to this section in order to determine whether the child should be returned home, an extension of the placement should be made,

a permanency hearing should be held, or a termination of the parent-child relationship proceeding should be instituted. The placement shall be terminated and the child returned to the child's home if the court finds by a preponderance of the evidence that the child will not suffer harm in the manner specified in section 232.2, subsection 6. If the placement is extended, the court shall determine whether additional services are necessary to facilitate the return of the child to the child's home, and if the court determines such services are needed, the court shall order the provision of such services. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the department or agency responsible for the placement of the child shall consider placing the child in the same licensed foster care facility.

a. The initial dispositional review hearing shall not be waived or continued beyond six months after the date of the dispositional hearing.

b. Subsequent dispositional review hearings shall not be waived or continued beyond twelve months after the date of the most recent dispositional review hearing.

c. For purposes of this subsection, a hearing held pursuant to section 232.103 or 232.104 satisfies the requirements for initial or subsequent dispositional review.

9. a. As used in this section, "*reasonable efforts*" means the efforts made to prevent or eliminate the need for removal of a child from the child's home. Reasonable efforts may include intensive family preservation services or family-centered services, if the child's safety in the home can be maintained during the time the services are provided. In determining whether reasonable efforts have been made, the court shall consider both of the following:

(1) The type, duration, and intensity of services or support offered or provided to the child and the child's family. If intensive family preservation services were not provided, the court record shall enumerate the reasons the services were not provided, including but not limited to whether the services were not available, not accepted by the child's family, judged to be unable to protect the child and the child's family during the time the services would have been provided, judged to be unlikely to be successful in resolving the problems which would lead to removal of the child, or other services were found to be more appropriate.

(2) The relative risk to the child of remaining in the child's home versus removal of the child.

b. As used in this section:

(1) "*Family-centered services*" means services which utilize a comprehensive approach to addressing the problems of individual family members, whether or not the problems are integrally related to the family, within the context of the family. Family-centered services are adapted to the individual needs of a family in the intensity and duration of service delivery and are intended to improve overall family functioning.

(2) "Intensive family preservation services" means services provided to a family with a child who is at imminent risk of out-of-home placement. The services are designed to address any problem creating the need for out-of-home placement and have the following characteristics: are persistently offered but provided at the family's option; are provided in the family's home; are available twenty-four hours per day; provide a response within twenty-four hours of the initial contact for assistance; have worker case-loads of not more than two through four families per worker at any one time; are provided for a period of four to six weeks; and provide funding in order to meet the special needs of a family.

95 Acts, ch 67, §16
 Subsection 3 amended

232.104 Permanency hearing.

1. If a child has been placed in foster care for a period of twelve months, or if the prior legal custodian of a child has abandoned efforts to regain custody of the child, the court shall, on its own motion, or upon application by any interested party, including the child's foster parent if the child has been placed with the foster parent for at least twelve months, hold a hearing to consider the issue of the establishment of permanency for the child.

Such a permanency hearing may be held concurrently with a hearing to review, modify, substitute, vacate, or terminate a dispositional order. Reasonable notice of a permanency hearing in a case of juvenile delinquency shall be provided pursuant to section 232.37. A permanency hearing shall be conducted in substantial conformance with the provisions of section 232.99. During the hearing the court shall consider the child's need for a secure and permanent placement in light of any permanency plan or evidence submitted to the court. Upon completion of the hearing the court shall enter written findings and make a determination based upon the permanency plan which will best serve the child's individual interests at that time.

2. After a permanency hearing the court shall do one of the following:

a. Enter an order pursuant to section 232.102 to return the child to the child's home.

b. Enter an order pursuant to section 232.102 to continue placement of the child for an additional six months at which time the court shall hold a hearing to consider modification of its permanency order. An order entered under this paragraph shall enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child's home will no longer exist at the end of the additional six-month period.

c. Direct the county attorney or the attorney for the child to institute proceedings to terminate the parent-child relationship.

d. Enter an order, pursuant to findings required by subsection 3, to do one of the following:

(1) Transfer guardianship and custody of the child to a suitable person.

(2) Transfer sole custody of the child from one parent to another parent.

(3) Transfer custody of the child to a suitable person for the purpose of long-term care.

(4) Order long-term foster care placement for the child in a licensed foster care home or facility.

3. Prior to entering a permanency order pursuant to subsection 2, paragraph "d", convincing evidence must exist showing that all of the following apply:

a. A termination of the parent-child relationship would not be in the best interest of the child.

b. Services were offered to the child's family to correct the situation which led to the child's removal from the home.

c. The child cannot be returned to the child's home.

4. Any permanency order may provide restrictions upon the contact between the child and the child's parent or parents, consistent with the best interest of the child.

5. Subsequent to the entry of a permanency order pursuant to this section, the child shall not be returned to the care, custody, or control of the child's parent or parents, over a formal objection filed by the child's attorney or guardian ad litem, unless the court finds by a preponderance of the evidence, that returning the child to such custody would be in the best interest of the child.

6. Following the entry of a permanency order which places a child in the custody or guardianship of another person or agency, the court shall retain jurisdiction and annually review the order to ascertain whether the best interest of the child is being served. When such order places the child in the custody of the department for the purpose of long-term foster care placement in a facility, the review shall be in a hearing that shall not be waived or continued beyond twelve months after the permanency hearing or the last review hearing. Any modification shall be accomplished through a hearing procedure following reasonable notice. During the hearing, all relevant and material evidence shall be admitted and procedural due process shall be provided to all parties.

95 Acts, ch 182, §5

Development of subsidized guardianship program to assist guardians of certain children with permanency orders under subsection 2, paragraph "d", subparagraph (1); 95 Acts, ch 205, §10

Subsection 2, paragraph b amended

232.105 Reserved.

232.106 Terms and conditions on child's parent.

If the court enters an order under this chapter which imposes terms and conditions on the child's parent, guardian, or custodian, the purpose of the terms and conditions shall be to assure the protection of the child. The order is subject to the following provisions:

1. The order shall state the reasons for and purpose of the terms and conditions.

2. If a parent, guardian, or custodian is required to have a chemical test of blood or urine for the purpose of determining the presence of an illegal drug, the test shall be a medically relevant test as defined in section 232.73. The parent, guardian, or custodian may select the laboratory which processes the test from among the laboratories approved pursuant to section 232.73. A positive test result shall not be used for the criminal prosecution of a parent, guardian, or custodian for the presence of an illegal drug.

95 Acts, ch 182, §9
Section applies to medically relevant tests performed on or after May 19, 1995, pursuant to court orders imposing terms and conditions in effect on or after May 19, 1995; 95 Acts, ch 182, §29
NEW section

232.107 and 232.108 Reserved.

232.111 Petition.

1. A child's guardian, guardian ad litem, or custodian, the department of human services, a juvenile court officer, or the county attorney may file a petition for termination of the parent-child relationship and parental rights with respect to a child.

2. The department, juvenile court officer, county attorney or judge may authorize any competent person having knowledge of the circumstances to file a termination petition with the clerk of the court without the payment of a filing fee.

3. A petition for termination of parental rights shall include the following:

a. The legal name, age, and domicile, if any, of the child.

b. The names, residences, and domicile of any:

(1) Living parents of the child.

(2) Guardian of the child.

(3) Custodian of the child.

(4) Guardian ad litem of the child.

(5) Petitioner.

(6) Person standing in the place of the parents of the child.

c. A plain statement of those facts and grounds specified in section 232.116 which indicate that the parent-child relationship should be terminated.

d. A plain statement explaining why the petitioner does not know any of the information required under paragraphs "a" and "b" of this subsection.

e. The signature and verification of the petitioner.

95 Acts, ch 147, §6
Subsection 1 amended

232.116 Grounds for termination.

1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:

a. The parents voluntarily and intelligently consent to the termination of parental rights and the parent-child relationship and for good cause desire the termination.

b. The court finds that there is clear and convincing evidence that the child has been abandoned or deserted.

c. The court finds that both of the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

d. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The child has been removed from the physical custody of the child's parents for a period of at least six consecutive months.

(3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. For the purposes of this subparagraph, "significant and meaningful contact" includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

e. The court finds that all of the following have occurred:

(1) The child is four years of age or older.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

f. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family.

(3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.

(4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

g. The court finds that all of the following have occurred:

(1) The child is three years of age or younger.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

h. The court finds that all of the following have occurred:

(1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.

(2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.

(3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

i. The court finds that both of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has been imprisoned for a crime against the child, the child's sibling, or another child in the household, or the parent has been imprisoned and it is unlikely that the parent will be released from prison for a period of five or more years.

j. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a chronic mental illness and has been repeatedly institutionalized for mental illness, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

k. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

l. The court finds that both of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 after finding that the child has been physically or sexually abused or neglected as a result of the acts or omissions of a parent.

(2) The parent found to have physically or sexually abused or neglected the child has been convicted of a felony and imprisoned for physically or sexually abusing or neglecting the child, the child's sibling, or any other child in the household.

m. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The parent has been convicted of child endangerment resulting in the death of the child's sibling, has been convicted of three or more acts of child endangerment involving the child, the child's sibling, or another child in the household, or has been convicted of child endangerment resulting in a serious injury to the child, the child's sibling, or another child in the household.

(3) There is clear and convincing evidence that the circumstances surrounding the parent's conviction for child endangerment would result in a finding of imminent danger to the child.

2. In considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the physical, mental, and emotional condition and needs of the child. Such consideration may include any of the following:

a. Whether the parent's ability to provide the needs of the child is affected by the parent's mental capacity or mental condition or the parent's imprisonment for a felony.

b. For a child who has been placed in foster family care by a court or has been voluntarily placed in foster family care by a parent or by another person, whether the child has become integrated into the foster family to the extent that the child's familial identity is with the foster family, and whether the foster family is able and willing to permanently integrate the child into the foster family. In considering integration into a foster family, the court shall review the following:

(1) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child.

(2) The reasonable preference of the child, if the court determines that the child has sufficient capacity to express a reasonable preference.

c. For a child who has been placed in foster family care, any relevant testimony or written statement provided by the child's foster parents.

3. The court need not terminate the relationship between the parent and child if the court finds any of the following:

a. A relative has legal custody of the child.

b. The child is over ten years of age and objects to the termination.

c. There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.

d. It is necessary to place the child in a hospital, facility, or institution for care and treatment and the continuation of the parent-child relationship is not preventing a permanent family placement for the child.

e. The absence of a parent is due to the parent's admission or commitment to any institution, hospital, or health facility or due to active service in the state or federal armed forces.

95 Acts, ch 182, §10, 11
Subsection 1, paragraph h amended
Subsection 1, NEW paragraph m

232.119 Adoption exchange established.

1. The purpose of this section is to facilitate the placement of all children in Iowa who are legally available for adoption through the establishment of an adoption exchange to help find adoptive homes for these children.

2. An adoption information exchange is established within the department to be operated by the department or by an individual or agency under contract with the department.

a. All special needs children under state guardianship shall be registered on the adoption exchange within sixty days of the termination of parental rights pursuant to section 232.117 or 600A.9 and assignment of guardianship to the director.

b. Prospective adoptive families requesting a special needs child shall be registered on the adoption exchange upon receipt of an approved home study.

3. To register a child on the Iowa exchange, the department adoption worker or the private agency worker shall register the pertinent information concerning the child on the exchange. A photo of the child and other necessary information shall be forwarded to the department to be included in the photo-listing book which shall be updated regularly. The department adoption worker or the private agency worker who places a child on the exchange shall update the registration information within ten working days after a change in the information occurs.

4. The exchange shall include a matching service for children registered or listed in the adoption photo-listing book and prospective adoptive families listed on the exchange. The department shall register a

child with the national exchange if the child has not been placed for adoption after three months on the exchange established pursuant to this section.

5. A request to defer registering the child on the exchange shall be submitted in writing and shall be granted if any of the following conditions exist:

a. The child is in an adoptive placement.

b. The child's foster parents or another person with a significant relationship is being considered as the adoptive family.

c. A diagnostic study or testing is necessary to clarify the child's needs and to provide an adequate description of the child's needs.

d. At the time of the request, the child is receiving medical care, mental health treatment, or other treatment and the child's care or treatment provider has determined that meeting prospective adoptive parents is not in the child's best interest.

e. The child is fourteen years of age or older and will not consent to an adoption plan and the consequences of not being adopted have been explained to the child.

6. The following requirements apply to a request to defer registering a child on the adoption exchange under subsection 5:

a. For a deferral granted by the exchange pursuant to subsection 5, paragraph "a", "b", or "e", the child's guardian shall address the child's deferral status in the report filed with the court and the court shall review the deferral status in the six-month review hearings held pursuant to section 232.117, subsection 6.

b. In addition to the requirements of paragraph "a", a deferral granted by the exchange pursuant to subsection 5, paragraph "b", shall be limited to not more than a one-time, ninety-day period unless the termination of parental rights order is appealed or the child is placed in a hospital or other institutional placement. However, if the foster parents or another person with a significant relationship continues to be considered the child's prospective adoptive family, additional extensions of the deferral request under subsection 5, paragraph "b", may be granted until sixty days after the date of the final decision regarding the appeal or until the date the child is discharged from a hospital or other institutional placement.

c. A deferral granted by the exchange pursuant to subsection 5, paragraph "c", shall be limited to not more than a one-time, ninety-day period.

d. A deferral granted by the exchange pursuant to subsection 5, paragraph "d", shall be limited to not more than a one-time, one-hundred-twenty-day period.

95 Acts, ch 182, §12
Subsection 5 amended
NEW subsection 6

232.143 Regional group foster care target.

1. A statewide target for the average number of children in group foster care placements on any day of a fiscal year, which placements are a charge upon or are paid for by the state, shall be established

annually by the general assembly. The department and the judicial department shall jointly develop a formula for allocating a portion of the statewide target established by the general assembly to each of the department's regions. The formula shall be based upon the region's proportion of the state population of children and of the statewide number of children placed in group foster care in the previous five completed fiscal years. The number determined in accordance with the formula shall be the group foster care placement target for that region.

2. For each of the department's regions, representatives appointed by the department and the juvenile court shall establish a plan for containing the number of children placed in group foster care ordered by the court within the target allocated to that region pursuant to subsection 1. The plan shall include monthly targets and strategies for developing alternatives to group foster care placements in order to contain expenditures for services provided to children within the amount appropriated by the general assembly for that purpose. Each regional plan shall be established in advance of the fiscal year to which the regional plan applies. To the extent possible, the department and the juvenile court shall coordinate the planning required under this subsection with planning for services paid under section 232.141, subsection 4. The department's regional administrator shall communicate regularly, as specified in the regional plan, with the juvenile courts within that region concerning the current status of the regional plan's implementation.

3. State payment for group foster care placements shall be limited to those placements which are in accordance with the regional plans developed pursuant to subsection 2.

Statewide target for 1995-1996 fiscal year; exceptions, conditions; other factors in allocation formula; 95 Acts, ch 205, §10
Section not amended; footnote updated

232.147 Confidentiality of juvenile court records.

1. Juvenile court records shall be confidential. They shall not be inspected and their contents shall not be disclosed except as provided in this section.

2. Official juvenile court records in cases alleging delinquency, including complaints under section 232.28, shall be public records, subject to sealing under section 232.150. If the court has excluded the public from a hearing under division II of this chapter, the transcript of the proceedings shall not be deemed a public record and inspection and disclosure of the contents of the transcript shall not be permitted except pursuant to court order or unless otherwise provided in this chapter. Complaints under section 232.28 shall be released in accordance with section 232.28. Other official juvenile court records may be released under this section by a juvenile court officer.

3. Official juvenile court records in all cases except those alleging delinquency may be inspected and their contents shall be disclosed to the following without court order:

a. The judge and professional court staff, including juvenile court officers.

b. The child and the child's counsel.

c. The child's parent, guardian or custodian, court-appointed special advocate, and guardian ad litem.

d. The county attorney and the county attorney's assistants.

e. An agency, association, facility or institution which has custody of the child, or is legally responsible for the care, treatment or supervision of the child.

f. A court, court professional staff, and adult probation officers in connection with the preparation of a presentence report concerning a person who prior thereto had been the subject of a juvenile court proceeding.

4. Pursuant to court order official records may be inspected by and their contents may be disclosed to:

a. A person conducting bona fide research for research purposes under whatever conditions the court may deem proper, provided that no personal identifying data shall be disclosed to such a person.

b. Persons who have a direct interest in a proceeding or in the work of the court.

5. Inspection of social records and disclosure of their contents shall not be permitted except pursuant to court order or unless otherwise provided in this subsection or chapter.

If an informal adjustment of a complaint is made pursuant to section 232.29, the intake officer shall disclose to the victim of the delinquent act, upon the request of the victim, the name and address of the child who committed the delinquent act.

6. All juvenile court records shall be made available for inspection and their contents shall be disclosed to any party to the case and the party's counsel and to any trial or appellate court in connection with an appeal pursuant to division VI of this chapter.

7. The clerk of the district court shall enter information from the juvenile record on the judgment docket and lien index, but only as necessary to record support judgments.

8. The state agency designated to enforce support obligations may release information as necessary in order to meet statutory responsibilities.

95 Acts, ch 191, §15
Subsection 2 amended

232.148 Fingerprints — photographs.

1. Except as provided in this section, a child shall not be fingerprinted or photographed by a criminal or juvenile justice agency after the child is taken into custody.

2. Fingerprints and photographs of a child who has been taken into custody and who is fourteen years of age or older may be taken and filed by a criminal or juvenile justice agency investigating the commission of a public offense other than a simple or serious misdemeanor. The criminal justice agency shall forward the fingerprints to the department of public safety for inclusion in the automated fingerprint identification system and may also retain a copy of the fingerprint card for comparison with latent fingerprints and the identification of repeat offenders.

3. If a peace officer has reasonable grounds to believe that latent fingerprints found during the investigation of the commission of a public offense are those of a particular child, fingerprints of the child may be taken for immediate comparison with the latent fingerprints regardless of the nature of the offense. If the comparison is negative the fingerprint card and other copies of the fingerprints taken shall be immediately destroyed. If the comparison is positive, the fingerprint card and other copies of the fingerprints taken shall be delivered to the division of criminal investigation of the department of public safety in the manner and on the forms prescribed by the commissioner of public safety within two working days after the fingerprints are taken. After notification by the child or the child's representative that the child has not had a delinquency petition filed against the child or has not entered into an informal adjustment agreement, the fingerprint card and copies of the fingerprints shall be immediately destroyed.

4. Fingerprint and photograph files of children may be inspected by peace officers when necessary for the discharge of their official duties. The juvenile court may authorize other inspections of such files in individual cases upon a showing that inspection is necessary in the public interest.

5. Fingerprints and photographs of a child shall be removed from the file and destroyed upon notification by the child's guardian ad litem or legal counsel to the department of public safety that either of the following situations apply:

a. A petition alleging the child to be delinquent is not filed and the child has not entered into an informal adjustment, admitting involvement in a delinquent act alleged in the complaint.

b. After a petition is filed, the petition is dismissed or the proceedings are suspended and the child has not entered into a consent decree and has not been adjudicated delinquent on the basis of a delinquent act other than one alleged in the petition in question.

95 Acts, ch 67, §17; 95 Acts, ch 191, §16, 17
See Code editor's note to §13B.8
Subsections 1, 2, and 5 amended
Subsection 5, paragraph c stricken

232.149 Records of criminal or juvenile justice agencies.

1. The taking of a child into custody under the

provisions of section 232.19 shall not be considered an arrest.

2. Records and files of a criminal or juvenile justice agency concerning a child involved in a delinquent act are public records, except that a criminal or juvenile justice agency shall not release the name of a child until a complaint is filed pursuant to section 232.28 and criminal history data is subject to the provisions of chapter 692. The records are subject to sealing under section 232.150 unless the juvenile court waives its jurisdiction over the child so that the child may be prosecuted as an adult for a public offense.

95 Acts, ch 191, §18, 19
Subsection 2 amended
Subsections 3, 4, 5, and 6 stricken

232.189 Reasonable efforts administrative requirements.

Based upon a model reasonable efforts family court initiative, the director of human services and the chief justice of the supreme court or their designees shall jointly establish and implement a statewide protocol for reasonable efforts to prevent or eliminate the need for placement of a child outside the child's home. In addition, the director and the chief justice shall design and implement a system for judicial and departmental reasonable efforts education for deployment throughout the state. The system for reasonable efforts education shall be developed in a manner which addresses the particular needs of rural areas and shall include but is not limited to all of the following topics:

1. Regular training concerning mental or emotional disorders which may afflict children and the impact children with such disorders have upon their families.

2. The duties of judicial and departmental employees associated with placing a child removed from the child's home into a permanent home and the urgency of the placement for the child.

3. The essential elements, including writing techniques, in developing effective permanency plans.

4. The essential elements of gathering evidence sufficient for the evidentiary standards required for judicial orders under this chapter.

95 Acts, ch 182, §13
Section amended

CHAPTER 234

CHILD AND FAMILY SERVICES

234.7 Department duties.

The department of human services shall comply with the following requirement associated with child foster care licensees under chapter 237:

The department shall include a child's foster parent in, and provide timely notice of, planning and

review activities associated with the child, including but not limited to permanency planning and placement review meetings, which shall include discussion of the child's rehabilitative treatment needs.

95 Acts, ch 182, §14
NEW section

234.39 Responsibility for cost of services.

It is the intent of this chapter that an individual receiving foster care services and the individual's parents or guardians, shall have primary responsibility for paying the cost of the care and services. The support obligation established and adopted under this section shall be consistent with the limitations on legal liability established under sections 222.78 and 230.15, and by any other statute limiting legal responsibility for support which may be imposed on a person for the cost of care and services provided by the department. Support obligations shall be established as follows:

1. For an individual to whom section 234.35, subsection 1, is applicable, a dispositional order of the juvenile court requiring the provision of foster care, or an administrative order entered pursuant to chapter 252C, or any order establishing paternity and support for a child in foster care, shall establish, after notice and a reasonable opportunity to be heard is provided to a parent or guardian, the amount of the parent's or guardian's support obligation for the cost of foster care provided by the department. The amount of the parent's or guardian's support obligation and the amount of support debt accrued and accruing shall be established in accordance with the child support guidelines prescribed under section 598.21, subsection 4. However, the court, or the department of human services in establishing support by administrative order, may deviate from the prescribed obligation after considering a recommendation by the department for expenses related to goals and objectives of a case permanency plan as defined under section 237.15, and upon written findings of fact which specify the reason for deviation and the prescribed guidelines amount. Any order for support shall direct the payment of the support obligation to the collection services center for the use of the department's foster care recovery unit. The order shall be filed with the clerk of the district court in which the responsible parent or guardian resides and has the same force and effect as a judgment when entered in the judgment docket and lien index. The collection services center shall disburse the payments pursuant to the order and record the disbursements. If payments are not made as ordered, the child support recovery unit may certify a default to the court and the court may, on its own motion, proceed under section 598.22 or 598.23 or the child support recovery

unit may enforce the judgment as allowed by law. An order entered under this subsection may be modified only in accordance with the guidelines prescribed under section 598.21, subsection 8.

2. For an individual who is served by the department of human services under section 234.35, and is not subject to a dispositional order of the juvenile court requiring the provision of foster care, the department shall determine the obligation of the individual's parent or guardian pursuant to chapter 252C and in accordance with the child support guidelines prescribed under section 598.21, subsection 4. However, the department may adjust the prescribed obligation for expenses related to goals and objectives of a case permanency plan as defined under section 237.15. An obligation determined under this subsection may be modified only in accordance with conditions under section 598.21, subsection 8.

3. A person entitled to periodic support payments pursuant to an order or judgment entered in any action for support, who also is or has a child receiving foster care services, is deemed to have assigned to the department current and accruing support payments attributable to the child effective as of the date the child enters foster care placement, to the extent of expenditure of foster care funds. The department shall notify the clerk of the district court when a child entitled to support payments is receiving foster care services pursuant to chapter 234. Upon notification by the department that a child entitled to periodic support payments is receiving foster care services, the clerk of the district court shall make a notation of the automatic assignment in the judgment docket and lien index. The notation constitutes constructive notice of assignment. The clerk of court shall furnish the department with copies of all orders and decrees awarding support when the child is receiving foster care services. At the time the child ceases to receive foster care services, the assignment of support shall be automatically terminated. Unpaid support accrued under the assignment of support rights during the time that the child was in foster care remains due to the department up to the amount of unreimbursed foster care funds expended. The department shall notify the clerk of court of the automatic termination of the assignment.

95 Acts, ch 52, §1
Subsection 1 amended

CHAPTER 235A

CHILD ABUSE

235A.15 Authorized access — procedures involving other states.

1. Notwithstanding chapter 22, the confidentiality of all child abuse information shall be maintained, except as specifically provided by subsection 2, 3, or 4.

2. Access to child abuse information other than unfounded child abuse information is authorized only to the following persons or entities:

a. Subjects of a report as follows:

(1) To a child named in a report as a victim of abuse or to the child's attorney or guardian ad litem.

(2) To a parent or the attorney for the parent of a child named in a report as a victim of abuse.

(3) To a guardian or legal custodian, or that person's attorney, of a child named in a report as a victim of abuse.

(4) To a person or the attorney for the person named in a report as having abused a child.

b. Persons involved in an investigation of child abuse as follows:

(1) To a health practitioner or mental health professional who is examining, attending, or treating a child whom such practitioner or professional believes or has reason to believe has been the victim of abuse or to a health practitioner or mental health professional whose consultation with respect to a child believed to have been the victim of abuse is requested by the department.

(2) To an employee or agent of the department of human services responsible for the investigation of a child abuse report.

(3) To a law enforcement officer responsible for assisting in an investigation of a child abuse allegation or for the temporary emergency removal of a child from the child's home.

(4) To a multidisciplinary team, if the department of human services approves the composition of the multidisciplinary team and determines that access to the team is necessary to assist the department in the investigation, diagnosis, assessment, and disposition of a child abuse case.

(5) In an individual case, to the mandatory reporter who reported the child abuse.

c. Individuals, agencies, or facilities providing care to a child as follows:

(1) To a licensing authority for a facility providing care to a child named in a report, if the licensing authority is notified of a relationship between facility policy and the child abuse under section 232.71, subsection 4.

(2) To an authorized person or agency responsible for the care or supervision of a child named in a report as a victim of abuse or a person named in a report as having abused a child, if the juvenile court or registry deems access to child abuse information by such person or agency to be necessary.

(3) To an employee or agent of the department of human services responsible for registering or licensing or approving the registration or licensing of an agency or facility, or to an individual providing care to a child and regulated by the department.

(4) To an employee of the department of human services responsible for an adoptive placement, a certified adoption investigator, or licensed child placing agency responsible for an adoptive placement.

(5) To an administrator of a psychiatric medical institution for children licensed under chapter 135H.

(6) To an administrator of a child foster care facility licensed under chapter 237 if the information concerns a person employed or being considered for employment by the facility.

(7) To an administrator of a child day care facility registered or licensed under chapter 237A if the

information concerns a person employed or being considered for employment by or living in the facility.

(8) To the superintendent of the Iowa braille and sight saving school if the information concerns a person employed or being considered for employment or living in the school.

(9) To the superintendent of the school for the deaf if the information concerns a person employed or being considered for employment or living in the school.

(10) To an administrator of a community mental health center accredited under chapter 230A if the information concerns a person employed or being considered for employment by the center.

(11) To an administrator of a facility or program operated by the state, a city, or a county which provides services or care directly to children, if the information concerns a person employed by or being considered for employment by the facility or program.

(12) To an administrator of an agency certified by the department of human services to provide services under a medical assistance home and community-based services waiver, if the information concerns a person employed by or being considered by the agency for employment.

d. Relating to judicial and administrative proceedings as follows:

(1) To a juvenile court involved in an adjudication or disposition of a child named in a report.

(2) To a district court upon a finding that information is necessary for the resolution of an issue arising in any phase of a case involving child abuse.

(3) To a court or administrative agency hearing an appeal for correction of child abuse information as provided in section 235A.19.

(4) To an expert witness at any stage of an appeal necessary for correction of child abuse information as provided in section 235A.19.

(5) To a probation or parole officer, juvenile court officer, or adult correctional officer having custody or supervision of, or conducting an investigation for a court or the board of parole regarding, a person named in a report as a victim of child abuse or as having abused a child.

e. Others as follows:

(1) To a person conducting bona fide research on child abuse, but without information identifying individuals named in a child abuse report, unless having that information open to review is essential to the research or evaluation and the authorized registry officials give prior written approval and the child, the child's guardian or guardian ad litem and the person named in a report as having abused a child give permission to release the information.

(2) To registry or department personnel when necessary to the performance of their official duties or to a person or agency under contract with the department to carry out official duties and functions of the registry.

(3) To the department of justice for the sole purpose of the filing of a claim for restitution or com-

pensation pursuant to section 910A.5 and section 912.4, subsections 3 through 5.

(4) To a legally constituted child protection agency of another state which is investigating or treating a child named in a report as having been abused or which is investigating or treating a person named as having abused a child.

(5) To a public or licensed child placing agency of another state responsible for an adoptive or foster care preplacement or placement evaluation.

(6) To the attorney for the department of human services who is responsible for representing the department.

(7) To the state and local citizen foster care review boards created pursuant to sections 237.16 and 237.19.

(8) To an employee or agent of the department of human services regarding a person who is providing child day care if the person is not registered or licensed to operate a child day care facility.

(9) To the board of educational examiners created under chapter 272 for purposes of determining whether a practitioner's license should be denied or revoked.

(10) To a legally constituted child protection agency in another state if the agency is conducting a records check of a person who is providing care or has applied to provide care to a child in the other state.

(11) To the legally authorized protection and advocacy agency recognized in section 135C.2, if a person identified in the information as a victim or a perpetrator of abuse resides in or receives services from a facility or agency because the person is diagnosed as having a developmental disability or a mental illness.

(12) To the department of human services for a record check relating to employment or residence pursuant to section 218.13.

(13) To an administrator of a child day care resource and referral agency which has entered into an agreement authorized by the department to provide child day care resource and referral services. Access is authorized if the information concerns a person providing child day care services or a person employed by a provider of such services and the agency includes the provider as a referral or the provider has requested to be included as a referral.

(14) To the Iowa board for the treatment of sexual abusers for purposes of certifying sex offender treatment providers.

3. Access to unfounded child abuse information is authorized only to those persons identified in subsection 2, paragraph "a", paragraph "b", subparagraphs (2) and (5), and paragraph "e", subparagraph (2), and to the department of justice for purposes of the crime victim compensation program in accordance with section 912.10.

4. Access to founded child abuse information is authorized to the department of personnel or to the personnel office of a public employer, as defined in section 20.3, as necessary for presentation in grievance or arbitration procedures provided for in sec-

tions 19A.14 and 20.18. Child abuse information introduced into a grievance or arbitration proceeding shall not be considered a part of the public record of a case.

If a child who is a legal resident of another state is present in this state and a report of child abuse is made concerning the child, the department shall act to ensure the safety of the child. The department shall contact the child's state of legal residency to coordinate the investigation of the report. If the child's state of residency refuses to conduct an investigation, the department shall commence an appropriate investigation.

If a report of child abuse is made concerning an alleged perpetrator who resides in this state and a child who resides in another state, the department shall assist the child's state of residency in conducting an investigation of the report. The assistance shall include but is not limited to an offer to interview the alleged perpetrator and any other relevant source. If the child's state of residency refuses to conduct an investigation of the report, the department shall commence an appropriate investigation. The department shall seek to develop protocols with states contiguous to this state for coordination in the investigation of a report of child abuse when a person involved with the report is a resident of another state.

95 Acts, ch 93, §1-3; 95 Acts, ch 182, §15, 16

Subsection 2, paragraph c, NEW subparagraphs (11) and (12)

Subsection 2, paragraph e, subparagraph (4) divided and amended into subparagraphs (4) and (5) and former subparagraphs (5)-(12) renumbered as (6)-(13)

Subsection 2, paragraph e, subparagraph (10) amended

Subsection 2, paragraph e, NEW subparagraph (14)

Subsection 4, unnumbered paragraph 1 amended

235A.18 Sealing and expungement of child abuse information.

1. Child abuse information relating to a particular case of suspected child abuse shall be sealed ten years after the receipt of the initial report of such abuse by the registry unless good cause be shown why the information should remain open to authorized access. If a subsequent report of a suspected case of child abuse involving the child named in the initial report as the victim of abuse or a person named in such report as having abused a child is received by the registry within this ten-year period, the information shall be sealed ten years after receipt of the subsequent report unless good cause be shown why the information should remain open to authorized access. The information shall be expunged eight years after the date the information was sealed.

2. Child abuse information which cannot be determined by a preponderance of the evidence to be founded or unfounded shall be sealed one year after the receipt of the initial report of abuse and expunged five years after the date it was sealed. Child abuse information which is determined by a preponderance of the evidence to be unfounded shall be expunged when it is determined to be unfounded. A report shall be determined to be unfounded as a result of any of the following:

a. The investigation of a report of suspected child abuse by the department.

b. A successful appeal as provided in section 235A.19.

c. A court finding by a juvenile or district court.

The juvenile or district court and county attorney shall expunge child abuse information upon notice from the registry.

3. However, if a correction of child abuse information is requested under section 235A.19 and the issue is not resolved at the end of the one-year period, the information shall be retained until the issue is resolved and if the child abuse information is not determined to be founded, the information shall be expunged at the appropriate time under subsection 2.

4. The registry, at least once a year, shall review and determine the current status of child abuse reports which are transmitted or made to the registry after July 1, 1974, which are at least one year old and in connection with which no investigatory report has been filed by the department of human services pursuant to section 232.71. If no such investigatory report has been filed, the registry shall request the department of human services to file a report. In the event a report is not filed within ninety days subsequent to such a request, the report and information relating thereto shall be sealed and remain sealed unless good cause be shown why the information should remain open to authorized access.

Section not amended; the pending amendments (94 Acts, ch 1130, §9 and 20) were repealed May 3, 1995, prior to taking effect; 95 Acts, ch 147, §8, 10

235A.19 Examination, requests for correction or expungement and appeal.

1. A subject of a child abuse report, as identified in section 235A.15, subsection 2, paragraph "a", shall have the right to examine child abuse information in the registry which refers to the subject. The registry may prescribe reasonable hours and places of examination.

2. a. A subject of a child abuse report may file with the department within six months of the date of the notice of the results of an investigation required by section 232.71, subsection 7, a written statement to the effect that child abuse information referring to the subject is in whole or in part erroneous, and may request a correction of that information or of the findings of the investigation report. The department shall provide the subject with an opportunity for an evidentiary hearing pursuant to chapter 17A to correct the information or the findings, unless the department corrects the information or findings as requested. The department shall delay the expungement of information which is not determined to be founded until the conclusion of a proceeding to correct the information or findings. The department may defer the hearing until the conclusion of a pend-

ing juvenile or district court case relating to the information or findings.

b. The department shall not disclose any child abuse information until the conclusion of the proceeding to correct the information or findings, except as follows:

(1) As necessary for the proceeding itself.

(2) To the parties and attorneys involved in a judicial proceeding.

(3) For the regulation of child care or child placement.

(4) Pursuant to court order.

(5) To the subject of an investigation or a report.

(6) For the care or treatment of a child named in a report as a victim of abuse.

(7) To persons involved in an investigation of child abuse.

3. The subject of a child abuse report may appeal the decision resulting from a hearing held pursuant to subsection 2 to the district court of Polk county or to the district court of the district in which the subject of the child abuse report resides. Immediately upon appeal the court shall order the department to file with the court a certified copy of the child abuse information. Appeal shall be taken in accordance with chapter 17A.

4. Upon the request of the appellant, the record and evidence in such cases shall be closed to all but the court and its officers, and access thereto shall be prohibited unless otherwise ordered by the court. The clerk shall maintain a separate docket for such actions. No person other than the appellant shall permit a copy of any of the testimony or pleadings or the substance thereof to be made available to any person other than a party to the action or the party's attorney. Violation of the provisions of this subsection shall be a public offense punishable under section 235A.21.

5. Whenever the registry corrects or eliminates information as requested or as ordered by the court, the registry shall advise all persons who have received the incorrect information of such fact. Upon application to the court and service of notice on the registry, any subject of a child abuse report may request and obtain a list of all persons who have received child abuse information referring to the subject.

6. In the course of any proceeding provided for by this section, the identity of the person who reported the disputed information and the identity of any person who has been reported as having abused a child may be withheld upon a determination by the registry that disclosure of their identities would be detrimental to their interests.

95 Acts, ch 49, §3
Subsection 5 amended

CHAPTER 235B

ADULT ABUSE

235B.2 Definitions.

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

1. *"Caretaker"* means a related or nonrelated person who has the responsibility for the protection, care, or custody of a dependent adult as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the court.

2. *"Court"* means the district court.

3. *"Department"* means the department of human services.

4. *"Dependent adult"* means a person eighteen years of age or older who is unable to protect the person's own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition which requires assistance from another, or as defined by departmental rule.

5. *"Dependent adult abuse"* means:

a. Any of the following as a result of the willful or negligent acts or omissions of a caretaker:

(1) Physical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult.

(2) The commission of a sexual offense under chapter 709 or section 726.2 with or against a dependent adult.

(3) Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult's physical or financial resources for one's own personal or pecuniary profit, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.

(4) The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult's life or health.

b. The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult's life or health as a result of the acts or omissions of the dependent adult.

Dependent adult abuse does not include depriving a dependent adult of medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment. However, this provision does not preclude a court from ordering that medical service be provided to the dependent adult if the dependent adult's health requires it.

Dependent adult abuse does not include the withholding or withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding or with-

drawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next of kin or guardian pursuant to the applicable procedures under chapter 125, 222, 229, or 633.

c. Sexual exploitation of a dependent adult who is a resident of a health care facility, as defined in section 135C.1, by a caretaker providing services to or employed by the health care facility, whether within the health care facility or at a location outside of the health care facility.

"Sexual exploitation" means any consensual or nonconsensual sexual conduct with a dependent adult for the purpose of arousing or satisfying the sexual desires of the caretaker or dependent adult, which includes but is not limited to kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in section 702.17. Sexual exploitation does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses.

6. *"Individual employed as an outreach person"* means a natural person who, in the course of employment, makes regular contacts with dependent adults regarding available community resources.

7. *"Person"* means person as defined in section 4.1.

95 Acts, ch 51, §3
Subsection 5, NEW paragraph c

235B.3 Dependent adult abuse reports.

1. The department shall receive dependent adult abuse reports and shall collect, maintain, and disseminate the reports by establishing a central registry for dependent adult abuse information. The department shall evaluate the reports expeditiously. However, the department of inspections and appeals is solely responsible for the evaluation and disposition of dependent adult abuse cases within health care facilities and shall inform the department of human services of such evaluations and dispositions.

Reports of dependent adult abuse which is the result of the acts or omissions of the dependent adult shall be collected and maintained in the files of the dependent adult as assessments only and shall not be included in the central registry.

2. All of the following persons shall report suspected dependent adult abuse to the department:

a. A self-employed social worker.

b. A social worker or an income maintenance worker under the jurisdiction of the department of human services.

c. A social worker employed by a public or private person including a public or private health care facility as defined in section 135C.1.

d. A certified psychologist.

e. A person who, in the course of employment, examines, attends, counsels, or treats a dependent adult and reasonably believes the dependent adult has suffered abuse, including:

(1) A member of the staff of a community mental health center, a member of the staff of a hospital, a member of the staff or employee of a public or private health care facility as defined in section 135C.1.

(2) A peace officer.

(3) An in-home homemaker-home health aide.

(4) An individual employed as an outreach person.

(5) A health practitioner, as defined in section 232.68.

(6) A member of the staff or an employee of a community, supervised apartment living arrangement, sheltered workshop, or work activity center.

f. A person who performs inspections of elder group homes for the department of elder affairs and a care review committee member assigned to an elder group home pursuant to chapter 231B.

3. If a staff member or employee is required to report pursuant to this section, the person shall immediately notify the person in charge or the person's designated agent, and the person in charge or the designated agent shall make the report by the end of the next business day.

4. Any other person who believes that a dependent adult has suffered abuse may report the suspected abuse to the department of human services.

5. Following the reporting of suspected dependent adult abuse, the department of human services shall complete an assessment of necessary services and shall make appropriate referrals for receipt of these services. The department may provide necessary protective services and may establish a sliding fee schedule for those persons able to pay a portion of the protective services.

6. Upon a showing of probable cause that a dependent adult has been abused, a court may authorize a person, also authorized by the department, to make an evaluation, to enter the residence of, and to examine the dependent adult. Upon a showing of probable cause that a dependent adult has been financially exploited, a court may authorize a person, also authorized by the department, to make an evaluation, and to gain access to the financial records of the dependent adult.

7. The department shall inform the appropriate county attorneys of any reports of dependent adult abuse. The department may request information from any person believed to have knowledge of a case of dependent adult abuse. The person, including but not limited to a county attorney, a law enforcement agency, a multidisciplinary team, or a social services agency in the state shall cooperate and assist in the evaluation upon the request of the department. County attorneys and appropriate law enforcement agencies shall also take any other lawful action nec-

essary or advisable for the protection of the dependent adult.

a. If, upon completion of the evaluation or upon referral from the department of inspections and appeals, the department determines that the best interests of the dependent adult require court action, the department shall initiate action for the appointment of a guardian or conservator or for admission or commitment to an appropriate institution or facility pursuant to the applicable procedures under chapter 125, 222, 229, or 633. The appropriate county attorney shall assist the department in the preparation of the necessary papers to initiate the action and shall appear and represent the department at all district court proceedings.

b. The department shall assist the court during all stages of court proceedings involving a suspected case of dependent adult abuse.

c. In every case involving abuse which is substantiated by the department and which results in a judicial proceeding on behalf of the dependent adult, legal counsel shall be appointed by the court to represent the dependent adult in the proceedings. The court may also appoint a guardian ad litem to represent the dependent adult if necessary to protect the dependent adult's best interests. The same attorney may be appointed to serve both as legal counsel and as guardian ad litem. Before legal counsel or a guardian ad litem is appointed pursuant to this section, the court shall require the dependent adult and any person legally responsible for the support of the dependent adult to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court deems that the dependent adult or the legally responsible person is able to bear all or a portion of the cost of the legal counsel or guardian ad litem, the court shall so order. In cases where the dependent adult or the legally responsible person is unable to bear the cost of the legal counsel or guardian ad litem, the expense shall be paid by the county.

8. A person participating in good faith in reporting or cooperating with or assisting the department in evaluating a case of dependent adult abuse has immunity from liability, civil or criminal, which might otherwise be incurred or imposed based upon the act of making the report or giving the assistance. The person has the same immunity with respect to participating in good faith in a judicial proceeding resulting from the report or cooperation or assistance or relating to the subject matter of the report, cooperation, or assistance.

9. It shall be unlawful for any person or employer to discharge, suspend, or otherwise discipline a person required to report or voluntarily reporting an instance of suspected dependent adult abuse pursuant to subsection 2 or 4, or cooperating with, or assisting the department of human services in evaluating a case of dependent adult abuse, or participating in judicial proceedings relating to the reporting or cooperation or assistance based solely upon the person's reporting or assistance relative to the instance of dependent adult abuse. A person or employer

found in violation of this subsection is guilty of a simple misdemeanor.

10. A person required by this section to report a suspected case of dependent adult abuse who knowingly and willfully fails to do so is guilty of a simple misdemeanor. A person required by this section to report a suspected case of dependent adult abuse who knowingly fails to do so is civilly liable for the damages proximately caused by the failure.

11. The department of inspections and appeals shall adopt rules which require licensed health care facilities to separate an alleged dependent adult abuser from a victim following an allegation of perpetration of abuse and prior to the completion of an investigation of the allegation.

95 Acts, ch 51, §4
Subsection 3 amended

235B.6 Authorized access.

1. Notwithstanding chapter 22, the confidentiality of all dependent adult abuse information shall be maintained, except as specifically provided by subsections 2 and 3.

2. Access to dependent adult abuse information other than unfounded dependent adult abuse information is authorized only to the following persons:

a. A subject of a report including all of the following:

(1) To an adult named in a report as a victim of abuse or to the adult's attorney or guardian ad litem.

(2) To a guardian or legal custodian, or that person's attorney, of an adult named in a report as a victim of abuse.

(3) To the person or the attorney for the person named in a report as having abused an adult.

b. A person involved in an investigation of dependent adult abuse including all of the following:

(1) A health practitioner or mental health professional who is examining, attending, or treating an adult whom such practitioner or professional believes or has reason to believe has been the victim of abuse or to a health practitioner or mental health professional whose consultation with respect to an adult believed to have been the victim of abuse is requested by the department.

(2) An employee or agent of the department responsible for the investigation of a dependent adult abuse report.

(3) A representative of the department involved in the certification or accreditation of an agency or program providing care or services to a dependent adult believed to have been a victim of abuse.

(4) A law enforcement officer responsible for assisting in an investigation of a dependent adult abuse allegation.

(5) A multidisciplinary team, if the department of human services approves the composition of the multidisciplinary team and determines that access to the team is necessary to assist the department in the investigation, diagnosis, assessment, and disposition of a case of dependent adult abuse.

(6) The mandatory reporter who reported the dependent adult abuse in an individual case.

c. A person providing care to an adult including all of the following:

(1) A licensing authority for a facility providing care to an adult named in a report.

(2) A person authorized as responsible for the care or supervision of an adult named in a report as a victim of abuse or a person named in a report as having abused an adult if the court or registry deems access to dependent adult abuse information by such person to be necessary.

(3) An employee or agent of the department responsible for registering or licensing or approving the registration or licensing of a person, or to an individual providing care to an adult and regulated by the department.

(4) The legally authorized protection and advocacy agency recognized pursuant to section 135C.2 if a person identified in the information as a victim or a perpetrator of abuse resided in or receives services from a facility or agency because the person is diagnosed as having a developmental disability or a mental illness.

(5) To an administrator of an agency certified by the department of human services to provide services under a medical assistance home and community-based services waiver, if the information concerns a person employed by or being considered by the agency for employment.

d. Relating to judicial and administrative proceedings, persons including all of the following:

(1) A court upon a finding that information is necessary for the resolution of an issue arising in any phase of a case involving dependent adult abuse.

(2) A court or administrative agency hearing an appeal for correction of dependent adult abuse information as provided in section 235B.10.

(3) An expert witness at any stage of an appeal necessary for correction of dependent adult abuse information as provided in section 235B.10.

e. Other persons including all of the following:

(1) A person conducting bona fide research on dependent adult abuse, but without information identifying individuals named in a dependent adult abuse report, unless having that information open to review is essential to the research or evaluation and the authorized registry officials give prior written approval and the adult, the adult's guardian or guardian ad litem, and the person named in a report as having abused an adult give permission to release the information.

(2) Registry or department personnel when necessary to the performance of their official duties or a person or agency under contract with the department to carry out official duties and functions of the registry.

(3) The department of justice for the sole purpose of the filing of a claim for reparation pursuant to section 910A.5 and section 912.4, subsections 3 through 5.

(4) A legally constituted adult protection agency of another state which is investigating or treating an adult named in a report as having been abused.

(5) The attorney for the department who is responsible for representing the department.

(6) A health care facility administrator or the administrator's designee, following the appeals process, for the purpose of hiring staff or continued employment of staff.

3. Access to unfounded dependent adult abuse information is authorized only to those persons iden-

tified in subsection 2, paragraph "a", paragraph "b", subparagraphs (2) and (6), and paragraph "e", subparagraph (2).

95 Acts, ch 50, §1; 95 Acts, ch 93, §4
Subsection 2, paragraph b amended
Subsection 2, paragraph c, NEW subparagraph (5)

CHAPTER 235C

COUNCIL ON CHEMICALLY EXPOSED INFANTS AND CHILDREN

235C.3 Council duties.

The council shall be responsible for the following activities:

1. *Data collection.* The council shall assemble relevant materials regarding the extent to which infants born in Iowa are chemically exposed, the services currently available to meet the needs of chemically exposed infants and children, and the costs incurred in caring for chemically exposed infants and children, including both costs borne directly by the state and costs borne by society.

2. *Prevention and education.* The council, after reviewing the data collected pursuant to subsection 1, and after reviewing education and prevention programs employed in Iowa and in other states, shall make recommendations to the appropriate division to develop a state prevention and education campaign, including the following components:

a. A broad-based public education campaign outlining the dangers inherent in substance use during pregnancy.

b. A health professional training campaign, including recommendations concerning the curriculum offered at the college of medicine at the state university of Iowa, providing assistance in the identification of women at risk of substance abuse during pregnancy and strategies to be employed in assisting those women to maintain healthy lifestyles during pregnancy. Included in this education campaign shall be guidelines to health professionals offering information on assessment, laboratory testing, medication use, and referrals.

c. A targeted public education campaign directed toward high-risk populations.

d. A technical assistance program for developing support programs to identified high-risk populations, including pregnant women who previously have given birth to chemically exposed infants or currently are using substances dangerous to the health of the fetus.

e. An education program for use within the school system, including training materials for school personnel to assist those personnel in identification, care, and referral.

3. *Identification.* The council shall develop recommendations regarding state programs or policies to increase the accuracy of the identification of chemically exposed infants and children.

4. *Treatment services.* The council shall seek to improve effective treatment services within the state for chemically exposed infants and children. As part of this responsibility, the council shall make recommendations which shall include, but are not limited to, the following:

a. Identification of programs available within the state for serving chemically exposed infants, children, and their families.

b. Recommended ways to enhance funding for effective treatment programs, including the use of state health care programs and services under the medical assistance program and the maternal and child health programs.

c. Identification of means to serve children who were chemically exposed infants when the children enter the school system.

As an additional part of this responsibility, the council shall determine whether a problem exists with respect to substance abuse treatment providers and physicians discriminating against pregnant women in providing treatment or prenatal care.

5. *Care and placement.* The council shall work with the department of human services to expand appropriate placement options for chemically exposed infants and children who have been abandoned by their parents or cannot safely be returned home. As part of this responsibility, the council shall do all of the following:

a. Assist the department of human services in developing rules to establish specialized foster care services that can attract foster parents to care for chemically exposed infants and children.

b. Identify additional services, such as therapeutic day care services, that may be needed to effectively care for chemically exposed infants and children.

c. Review the need for residential programs designed to meet the needs of chemically exposed infants and children.

As an additional part of the responsibility, the council shall determine whether a problem exists with respect to substance abuse treatment providers and physicians discriminating against pregnant women in providing treatment or prenatal care.

6. *Awards of grants and development of pilot programs.* From funds appropriated for this purpose, the council shall award grants or develop pilot programs to achieve the purposes of the council.

7. *Annual report.* The council shall annually report to the governor and members of the general assembly on the progress it has made toward meeting its responsibilities.

The council shall meet at least twice annually, and may establish such subcommittees and task forces as are necessary to achieve its purpose.

8. *Confidentiality of information.* Data collected pursuant to this chapter shall be confidential to the extent necessary to protect the identity of persons who are the subjects of the data collection.

95 Acts, ch 182, §17
Subsection 3 amended

CHAPTER 236

DOMESTIC ABUSE

236.2 Definitions.

For purposes of this chapter, unless a different meaning is clearly indicated by the context:

1. *"Department"* means the department of justice.

2. *"Domestic abuse"* means committing assault as defined in section 708.1 under any of the following circumstances:

a. The assault is between family or household members who resided together at the time of the assault.

b. The assault is between separated spouses or persons divorced from each other and not residing together at the time of the assault.

c. The assault is between persons who are parents of the same minor child, regardless of whether they have been married or have lived together at any time.

d. The assault is between persons who have been family or household members residing together within the past year and are not residing together at the time of the assault.

3. *"Emergency shelter services"* include, but are not limited to, secure crisis shelters or housing for victims of domestic abuse.

4. a. *"Family or household members"* means spouses, persons cohabiting, parents, or other persons related by consanguinity or affinity.

b. *"Family or household members"* does not include children under age eighteen of persons listed in paragraph "a".

5. *"Pro se"* means a person proceeding on the person's own behalf without legal representation.

6. *"Support services"* include, but are not limited to, legal services, counseling services, transportation services, child care services, and advocacy services.

95 Acts, ch 180, §7
For definition of "plaintiff", see §236.3, subsection 2
Subsection 4 amended

236.3 Commencement of actions — waiver to juvenile court.

A person, including a parent or guardian on behalf of an unemancipated minor, may seek relief from domestic abuse by filing a verified petition in the district court. Venue shall lie where either party resides. The petition shall state the:

1. Name of the plaintiff and the name and address of the plaintiff's attorney, if any. If the plaintiff

is proceeding pro se, the petition shall state a mailing address for the plaintiff.

2. If the petition is being filed on behalf of an unemancipated minor, the name of the parent or guardian filing the petition and the parent's or guardian's address. For the purposes of this chapter, *"plaintiff"* includes a person filing an action on behalf of an unemancipated minor.

3. Name and address, if known, of the defendant.

4. Relationship of the plaintiff to the defendant.

5. Nature of the alleged domestic abuse.

6. Name and age of each child under eighteen whose welfare may be affected by the controversy.

7. Desired relief, including a request for temporary or emergency orders.

If the plaintiff files an affidavit stating that the plaintiff does not have sufficient funds to pay the cost of filing and service, the petition shall be filed and service shall be made without payment of costs. If a petition is filed and service is made without payment of costs, the court shall determine at the hearing if the payment of costs would prejudice the plaintiff's financial ability to provide economic necessities for the plaintiff or the plaintiff's dependents. If the court finds that the payment of costs would not prejudice the plaintiff's financial ability to provide economic necessities for the plaintiff or the plaintiff's dependents, the court may order the plaintiff to pay the costs of filing and service. However, in making the determinations, the court shall not consider funds no longer available to the plaintiff as a result of the commencement of the action.

If the person against whom relief from domestic abuse is being sought is seventeen years of age or younger, the district court shall waive its jurisdiction over the action to the juvenile court.

95 Acts, ch 180, §8-10
Unnumbered paragraph 1 amended
NEW subsection 2 and former subsections 2-6 renumbered as 3-7
NEW unnumbered paragraph 3

236.5 Disposition.

Upon a finding that the defendant has engaged in domestic abuse:

1. The court may order that the plaintiff, the defendant, and the children who are members of the household receive professional counseling, either from a private source approved by the court or from a source appointed by the court. Costs of counseling

shall be paid in full or in part by the parties and taxed as court costs. If the court determines that the parties are unable to pay the costs, they may be paid in full or in part from the county treasury.

2. The court may grant a protection order or approve a consent agreement which may contain but is not limited to any of the following provisions:

a. That the defendant cease domestic abuse of the plaintiff.

b. That the defendant grant possession of the residence to the plaintiff to the exclusion of the defendant or that the defendant provide suitable alternate housing for the plaintiff.

c. That the defendant stay away from the plaintiff's residence, school or place of employment.

d. The awarding of temporary custody of or establishing temporary visitation rights with regard to children under eighteen. In awarding temporary custody or temporary visitation rights, the court shall give primary consideration to the safety of the victim and the children. If the court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted visitation, the court shall condition or restrict visitation as to time, place, duration, or supervision, or deny visitation entirely, as needed to guard the safety of the victim and the children. The court shall also investigate whether any other existing orders awarding custody or visitation rights should be modified.

e. That the defendant pay the clerk a sum of money for the separate support and maintenance of the plaintiff and children under eighteen.

An order for counseling, a protection order or approved consent agreement shall be for a fixed period of time not to exceed one year. The court may amend its order or a consent agreement at any time upon a petition filed by either party and after notice and hearing.

The order shall state whether a person is to be taken into custody by a peace officer for a violation of the terms stated in the order.

3. The court may order that the defendant pay the plaintiff's attorneys fees and court costs.

4. An order or consent agreement under this section shall not affect title to real property.

5. A certified copy of any order or approved consent agreement shall be issued to the plaintiff, the defendant and the county sheriff having jurisdiction to enforce the order or consent agreement, and the twenty-four hour dispatcher for the county sheriff. Any subsequent amendment or revocation of an order or consent agreement shall be forwarded by the clerk to all individuals and the county sheriff previously notified. The clerk shall notify the county sheriff and the twenty-four hour dispatcher for the county sheriff in writing so that the county sheriff and the county sheriff's dispatcher receive written notice within six hours of filing the order, approved consent agreement, amendment, or revocation. The clerk may fulfill this requirement by sending the notice by facsimile or other electronic transmission which reproduces the notice in writing within six hours of filing the order. The county sheriff's dispatcher shall

notify all law enforcement agencies having jurisdiction over the matter and the twenty-four hour dispatcher for the law enforcement agencies upon notification by the clerk. The clerk shall send or deliver a written copy of any such document to the law enforcement agencies and the twenty-four hour dispatcher within twenty-four hours of filing the document.

95 Acts, ch 180, §11

For restrictions concerning issuance of mutual protective orders, see §236.20

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

236.8 Violation of order — contempt — penalties — hearings.

A person commits a simple misdemeanor or the court may hold a person in contempt for a violation of an order or court-approved consent agreement entered under this chapter, for violation of a temporary or permanent protective order or order to vacate the homestead under chapter 598, or for violation of any order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault. If convicted or held in contempt, the defendant shall serve a jail sentence. Any jail sentence of more than one day imposed under this section shall be served on consecutive days. A defendant who is held in contempt or convicted may be ordered by the court to pay the plaintiff's attorneys fees and court costs incurred in the proceedings under this section.

A hearing in a contempt proceeding brought pursuant to this section shall be held not less than five and not more than fifteen days after the issuance of a rule to show cause, as set by the court.

A person shall not be convicted of and held in contempt for the same violation of an order or court-approved consent agreement entered under this chapter, for the same violation of a temporary or permanent protective order or order to vacate the homestead under chapter 598, or for violation of any order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault.

95 Acts, ch 180, §12

Section amended

236.19 Foreign protective orders — registration — enforcement.

1. As used in this section, "foreign protective order" means a protective order entered in a state other than Iowa which would be an order or court-approved consent agreement entered under this chapter, a temporary or permanent protective order or order to vacate the homestead under chapter 598, or an order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault if it had been entered in Iowa.

2. A copy of a foreign protective order authenticated in accordance with the statutes of this state may be filed with the clerk of the district court of the

county in which the person in whose favor the order was entered resides. The clerk shall provide copies of the order as required by section 236.5.

3. A foreign protective order so filed has the same effect and shall be enforced in the same manner as a protective order issued in this state.

95 Acts, ch 180, §13
NEW section

236.20 Mutual protective orders prohibited — exceptions.

A court in an action under this chapter shall not issue mutual protective orders against the victim and the abuser unless both file a petition requesting a protective order.

95 Acts, ch 180, §14
NEW section

CHAPTER 237

CHILD FOSTER CARE FACILITIES

237.15 Definitions.

For the purposes of this division unless otherwise defined:

1. "*Case permanency plan*" means the plan, mandated by Pub. L. No. 96-272, as codified in 42 U.S.C. § 671(a)(16), 627(a)(2)(B), and 675(1), (5), which is designed to achieve placement in the least restrictive, most family-like setting available and in close proximity to the parent's home, consistent with the best interests and special needs of the child, and which considers the placement's proximity to the school in which the child is enrolled at the time of placement. The plan shall be developed by the department or agency involved and the child's parent, guardian, or custodian. The plan shall specifically include all of the following:

a. Plans for carrying out the voluntary placement agreement or judicial determination pursuant to which the child entered care.

b. The type and appropriateness of the placement and services to be provided to the child.

c. The care and services that will be provided to the child, biological parents, and foster parents.

d. How the care and services will meet the needs of the child while in care and will facilitate the child's return home or other permanent placement.

e. The efforts to place the child with a relative.

f. The rationale for an out-of-state placement, and the efforts to prevent such placement, if the child has been placed out of state.

g. Time frames to meet the stated permanency goal and short-term objectives.

h. To the extent the records are available and accessible, a summary of the child's health and education records, including the date the records were supplied to the licensee who is the child's foster care provider.

i. When a child is sixteen years of age or older, a written plan of services which, based upon an assessment of the child's needs, would assist the child in preparing for the transition from foster care to independent living. If the child is interested in pursuing higher education, the plan shall provide for the

child's participation in the college student aid commission's program of assistance in applying for federal and state aid under section 261.2.

j. The actions expected of the parent, guardian, or custodian in order for the agency to recommend that the court terminate a dispositional order for the child's out-of-home placement and for the agency to end its involvement with the child and the child's family.

2. "*Child receiving foster care*" means a child defined in section 234.1 who is described by any of the following circumstances:

a. The child's foster care placement is the financial responsibility of the state pursuant to section 234.35.

b. The child is under the guardianship of the department.

c. The child has been involuntarily hospitalized for mental illness pursuant to chapter 229.

d. The child is at-risk of being placed outside the child's home, the department or court is providing or planning to provide services to the child, and the department or court has requested the involvement of the state or local board.

3. "*Family*" means the social unit consisting of the child and the biological or adoptive parent, step-parent, brother, sister, stepbrother, stepsister, and grandparent of the child.

4. "*Local board*" means a local citizen foster care review board created pursuant to section 237.19.

5. "*Person or court responsible for the child*" means the department, including but not limited to the department of human services, agency, or individual who is the guardian of a child by court order issued by the juvenile or district court and has the responsibility of the care of the child, or the court having jurisdiction over the child.

6. "*State board*" means the state citizen foster care review board created pursuant to section 237.16.

95 Acts, ch 182, §18, 19
Subsection 1, unnumbered paragraph 1 amended
Subsection 1, NEW paragraph j

CHAPTER 239

FAMILY INVESTMENT PROGRAM

Requests for federal waivers relating to limited benefit plans and to additional residence, education, and work requirements; rules; applicability; schedule; 95 Acts, ch 53; 95 Acts, ch 116

CHAPTER 249A

MEDICAL ASSISTANCE

Request for federal waiver required for home and community-based medical assistance services on or before July 1, 1995; prohibition against mandatory county funding; inclusion of consumer directed attendant care in waivers; home and community-based waiver for persons with physical disabilities, appropriation, and pilot project for the personal assistance services program under §225C.46; 94 Acts, ch 1160, §1; 94 Acts, ch 1170, §57; 95 Acts, ch 205, §3, 20; 95 Acts, ch 209, §29

249A.3 Eligibility.

The extent of and the limitations upon eligibility for assistance under this chapter is prescribed by this section, subject to federal requirements, and by laws appropriating funds for assistance provided pursuant to this chapter.

1. Medical assistance shall be provided to, or on behalf of, any individual or family residing in the state of Iowa, including those residents who are temporarily absent from the state, who:

a. Is a recipient of federal supplementary security income or who would be eligible for federal supplemental security income if living in their own home.

b. Is a recipient of family investment program payments under chapter 239 or is an individual who would be eligible for unborn child payments under the family investment program, as authorized by Title IV-A of the federal Social Security Act, if the family investment program under chapter 239 provided for unborn child payments during the entire pregnancy.

c. Was a recipient of one of the previous categorical assistance programs as of December 31, 1973, and would continue to meet the eligibility requirements for one of the previous categorical assistance programs as the requirements existed on that date.

d. Is a child up to one year of age who was born on or after October 1, 1984 to a woman receiving medical assistance on the date of the child's birth, who continues to be a member of the mother's household, and whose mother continues to receive medical assistance.

e. Is a pregnant woman whose pregnancy has been medically verified and who qualifies under either of the following:

(1) The woman would be eligible for a cash payment under the family investment program under chapter 239, if the child were born and living with the woman in the month of payment.

(2) The woman meets the income and resource requirements of the family investment program un-

der chapter 239, provided the unborn child is considered a member of the household, and the woman's family is treated as though deprivation exists.

f. Is a child who is less than seven years of age and who meets the income and resource requirements of the family investment program under chapter 239.

g. (1) Is a child who is one through five years of age as prescribed by the federal Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 6401, whose income is not more than one hundred thirty-three percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

(2) Is a child born after September 30, 1983, who has attained six years of age but has not attained nineteen years of age as prescribed by the federal Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 4601, whose income is not more than one hundred percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

h. Is a woman who, while pregnant, meets eligibility requirements for assistance under the federal Social Security Act, § 1902(1) and continues to meet the requirements except for income. The woman is eligible to receive assistance until sixty days after the date pregnancy ends.

i. Is a pregnant woman who is determined to be presumptively eligible by a health care provider qualified under the federal Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 9407. The woman is eligible for ambulatory prenatal care assistance until the last day of the month following the month of the presumptive eligibility determination. If the department receives the woman's medical assistance application by the last day of the month following the month of the presumptive eligibility determination, the woman is eligible for ambulatory prenatal care assistance until the department actually determines the woman's eligibility or ineligibility.

ity for medical assistance. The costs of services provided during the presumptive eligibility period shall be paid by the medical assistance program for those persons who are determined to be ineligible through the regular eligibility determination process.

j. Is a pregnant woman or infant less than one year of age whose income does not exceed the federally prescribed percentage of the poverty level in accordance with the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360, § 302.

k. Is a pregnant woman or infant whose income is more than the limit prescribed under the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360 § 302, but not more than one hundred eighty-five percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

l. Is a child for whom adoption assistance or foster care maintenance payments are paid under Title IV-E of the federal Social Security Act.

m. Is an individual or family who is ineligible for the family investment program under chapter 239 because of requirements that do not apply under Title XIX of the federal Social Security Act.

n. Was a federal supplemental security income or a state supplementary assistance recipient, as defined by section 249.1, and a recipient of federal social security benefits at one time since August 1, 1977, and would be eligible for federal supplemental security income or state supplementary assistance but for the increases due to the cost of living in federal social security benefits since the last date of concurrent eligibility.

o. Is an individual whose spouse is deceased and who is ineligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, due to the elimination of the actuarial reduction formula for federal social security benefits under the federal Social Security Act and subsequent cost of living increases.

p. Is an individual who is at least sixty years of age and is ineligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, because of receipt of social security widow or widower benefits and is not eligible for federal medicare, part A coverage.

q. Is a disabled individual, and is at least eighteen years of age, who receives parental social security benefits under the federal Social Security Act and is not eligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, because of the receipt of the social security benefits.

2. Medical assistance may also, within the limits of available funds and in accordance with section 249A.4, subsection 1, be provided to, or on behalf of, other individuals and families who are not excluded under subsection 4 of this section and whose incomes and resources are insufficient to meet the cost of necessary medical care and services in accordance with the following order of priorities:

a. Individuals who are receiving care in a hospital or in a basic nursing home, intermediate nursing home, skilled nursing home or extended care facility, as defined by section 135C.1, and who meet all eligibility requirements for federal supplementary security income except that their income exceeds the allowable maximum therefor, but whose income is not in excess of the maximum established by subsection 4 for eligibility for medical assistance and is insufficient to meet the full cost of their care in the hospital or health care facility on the basis of standards established by the department.

b. Individuals under twenty-one years of age living in a licensed foster home, or in a private home pursuant to a subsidized adoption arrangement, for whom the department accepts financial responsibility in whole or in part and who are not eligible under subsection 1.

c. Individuals who are receiving care in an institution for mental diseases, and who are under twenty-one years of age and whose income and resources are such that they are eligible for the family investment program under chapter 239, or who are sixty-five years of age or older and who meet the conditions for eligibility in paragraph "a" of this subsection.

d. Individuals and families whose incomes and resources are such that they are eligible for federal supplementary security income or the family investment program, but who are not actually receiving such public assistance.

e. Individuals who are receiving state supplementary assistance as defined by section 249.1 or other persons whose needs are considered in computing the recipient's assistance grant.

f. Individuals under twenty-one years of age who qualify on a financial basis for, but who are otherwise ineligible to receive assistance under the family investment program.

g. Individuals and families who would be eligible under subsection 1 or 2 of this section except for excess income or resources, or a reasonable category of those individuals and families.

h. Individuals who have attained the age of twenty-one but have not yet attained the age of sixty-five who qualify on a financial basis for, but who are otherwise ineligible to receive, federal supplementary security income or assistance under the family investment program.

Notwithstanding the provisions of this subsection establishing priorities for individuals and families to receive medical assistance, the department may determine within the priorities listed in this subsection which persons shall receive medical assistance based on income levels established by the department, subject to the limitations provided in subsection 4.

3. Additional medical assistance may, within the limits of available funds and in accordance with section 249A.4, subsection 1, be provided to, or on behalf of, either:

a. Only those individuals and families described in subsection 1 of this section; or

b. Those individuals and families described in both subsections 1 and 2.

4. Discretionary medical assistance, within the limits of available funds and in accordance with section 249A.4, subsection 1, may be provided to or on behalf of those individuals and families described in subsection 2, paragraph "g" of this section.

5. Assistance shall not be granted under this chapter to:

a. An individual or family whose income, considered to be available to the individual or family, exceeds federally prescribed limitations.

b. An individual or family whose resources, considered to be available to the individual or family, exceed federally prescribed limitations.

6. In determining the eligibility of an individual for medical assistance under this chapter, for resources transferred to the individual's spouse before October 1, 1989, or to a person other than the individual's spouse before July 1, 1989, the department shall include, as resources still available to the individual, those nonexempt resources or interests in resources, owned by the individual within the preceding twenty-four months, which the individual gave away or sold at less than fair market value for the purpose of establishing eligibility for medical assistance under this chapter.

a. A transaction described in this subsection is presumed to have been for the purpose of establishing eligibility for medical assistance under this chapter unless the individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.

b. The value of a resource or an interest in a resource in determining eligibility under this subsection is the fair market value of the resource or interest at the time of the transaction less the amount of any compensation received.

c. If a transaction described in this subsection results in uncompensated value exceeding twelve thousand dollars, the department shall provide by rule for a period of ineligibility which exceeds twenty-four months and has a reasonable relationship to the uncompensated value above twelve thousand dollars.

7. In determining the eligibility of an individual for medical assistance under this chapter, the department shall consider resources transferred to the individual's spouse on or after October 1, 1989, or to a person other than the individual's spouse on or after July 1, 1989, and prior to August 11, 1993, as provided by the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360, § 303(b), as amended by the federal Family Support Act of 1988, Pub. L. No. 100-485, § 608(d)(16)(B), (D), and the federal Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 6411(e)(1).

8. Medicare cost sharing shall be provided in accordance with the provisions of Title XIX of the federal Social Security Act, section 1902(a)(10)(E), as codified in 42 U.S.C. § 1396a(a)(10)(E), to or on behalf of an individual who is a resident of the state or a resident who is temporarily absent from the state,

and who is a member of any of the following eligibility categories:

a. A qualified medicare beneficiary as defined under Title XIX of the federal Social Security Act, section 1905(p)(1), as codified in 42 U.S.C. § 1396d(p)(1).

b. A qualified disabled and working person as defined under Title XIX of the federal Social Security Act, section 1905(s), as codified in 42 U.S.C. § 1396d(s).

c. A specified low-income medicare beneficiary as defined under Title XIX of the federal Social Security Act, section 1902(a)(10)(E), as codified in 42 U.S.C. § 1396a(10)(E)(iii).

9. Beginning October 1, 1990, in determining the eligibility of an institutionalized individual for assistance under this chapter, the department shall establish a minimum community spouse resource allowance amount of twenty-four thousand dollars to be retained for the benefit of the institutionalized individual's community spouse in accordance with the federal Social Security Act, section 1924(f) as codified in 42 U.S.C. § 1396r-5(f).

10. Group health plan cost sharing shall be provided as required by Title XIX of the federal Social Security Act, section 1906, as codified in 42 U.S.C. § 1396e.

11. a. In determining the eligibility of an individual for medical assistance, the department shall consider transfers of assets made on or after August 11, 1993, as provided by the federal Social Security Act, section 1917(c), as codified in 42 U.S.C. § 1396p(c).

b. The department shall exercise the option provided in 42 U.S.C. § 1396p(c) to provide a period of ineligibility for medical assistance due to a transfer of assets by a noninstitutionalized individual or the spouse of a noninstitutionalized individual. For noninstitutionalized individuals, the number of months of ineligibility shall be equal to the total, cumulative uncompensated value of all assets transferred by the individual or the individual's spouse on or after the look-back date specified in 42 U.S.C. § 1396p(c)(1)(B)(i), divided by the average monthly cost to a private patient for nursing facility services in Iowa at the time of application. The services for which noninstitutionalized individuals shall be made ineligible shall include any long-term care services for which medical assistance is otherwise available. Notwithstanding section 17A.4, the department may adopt rules providing a period of ineligibility for medical assistance due to a transfer of assets by a noninstitutionalized individual or the spouse of a noninstitutionalized individual without notice of opportunity for public comment, to be effective immediately upon filing under section 17A.5, subsection 2, paragraph "b", subparagraph (1).

12. In determining the eligibility of an individual for medical assistance, the department shall consider income or assets relating to trusts or similar legal instruments or devices established on or before August 10, 1993, as available to the individual, in accordance with the federal Comprehensive Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-272, § 9506(a), as amended by the federal Omnibus

Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 9435(c).

13. In determining the eligibility of an individual for medical assistance, the department shall consider income or assets relating to trusts or similar legal instruments or devices established after August 10, 1993, as available to the individual, in accordance with 42 U.S.C. § 1396p(d) and sections 633.708 and 633.709.

95 Acts, ch 68, § 1
Subsection 1, paragraph i amended

249A.5 Recovery of payment.

1. Medical assistance paid to, or on behalf of, a recipient or paid to a provider of services is not recoverable, except as provided in subsection 2, unless the assistance was incorrectly paid. Assistance incorrectly paid is recoverable from the provider, or from the recipient, while living, as a debt due the state and, upon the recipient's death, as a claim classified with taxes having preference under the laws of this state.

2. The provision of medical assistance to an individual who is fifty-five years of age or older, or who is a resident of a nursing facility, intermediate care facility for the mentally retarded, or mental health institute, who cannot reasonably be expected to be discharged and return to the individual's home, creates a debt due the department from the individual's estate for all medical assistance provided on the individual's behalf, upon the individual's death.

a. The department shall waive the collection of the debt created under this subsection from the estate of a recipient of medical assistance to the extent that collection of the debt would result in either of the following:

(1) Reduction in the amount received from the recipient's estate by a surviving spouse, or by a surviving child who was under age twenty-one, blind, or permanently and totally disabled at the time of the individual's death.

(2) Otherwise work an undue hardship as determined on the basis of criteria established pursuant to 42 U.S.C. § 1396p(b)(3).

b. If the collection of all or part of a debt is waived pursuant to subsection 2, paragraph "a", subparagraph (1), the amount waived shall be a debt due from the estate of the recipient's surviving spouse or blind or disabled child, upon the death of the spouse or child, or due from a surviving child who was under twenty-one years of age at the time of the recipient's death, upon the child reaching age twenty-one, to the extent the recipient's estate is received by the surviving spouse or child.

c. For purposes of this section, the estate of a medical assistance recipient, surviving spouse, or surviving child includes any real property, personal property, or other asset in which the recipient, spouse, or child had any legal title or interest at the time of the recipient's, spouse's, or child's death, to the extent of such interests, including but not limited to interests in jointly held property and interests in trusts.

d. For purposes of collection of a debt created by this subsection, all assets included in the estate of a medical assistance recipient, surviving spouse, or surviving child pursuant to paragraph "c" are subject to probate.

e. Interest shall accrue on a debt due under this subsection, at the rate provided pursuant to section 535.3, beginning six months after the death of a medical assistance recipient, surviving spouse, or surviving child.

f. If a debt is due under this subsection from the estate of a recipient, the administrator of the nursing facility, intermediate care facility for the mentally retarded, or mental health institute in which the recipient resided at the time of the recipient's death, and the personal representative of the recipient, if applicable, shall report the death to the department within ten days of the death of the recipient. For the purposes of this paragraph, "personal representative" means a person who filed a medical assistance application on behalf of the recipient or who manages the financial affairs of the recipient.

95 Acts, ch 68, § 2
Subsection 2, NEW paragraph f

249A.12 Assistance to persons with mental retardation.

1. Assistance may be furnished under this chapter to an otherwise eligible recipient who is a resident of a health care facility licensed under chapter 135C and certified as an intermediate care facility for the mentally retarded.

2. A county shall reimburse the department on a monthly basis for that portion of the cost of assistance provided under this section to a recipient with legal settlement in the county, which is not paid from federal funds, if the recipient's placement has been approved by the appropriate review organization as medically necessary and appropriate. The department shall place all reimbursements from counties in the appropriation for medical assistance, and may use the reimbursed funds in the same manner and for any purpose for which the appropriation for medical assistance may be used.

3. If a county reimburses the department for medical assistance provided under this section and the amount of medical assistance is subsequently repaid through a medical assistance income trust or a medical assistance special needs trust as defined in section 633.707, the department shall reimburse the county on a proportionate basis. The department shall adopt rules to implement this subsection.

4. a. Effective July 1, 1995, the state shall be responsible for all of the nonfederal share of the costs of intermediate care facility for the mentally retarded services provided under medical assistance to minors. Notwithstanding subsection 2 and contrary provisions of section 222.73, effective July 1, 1995, a county is not required to reimburse the department and shall not be billed for the nonfederal share of the costs of such services provided to minors.

b. Effective July 1, 1995, the state shall be responsible for all of the nonfederal share of medical

assistance home and community-based waivers for persons with mental retardation services provided to minors and a county is not required to reimburse the department and shall not be billed for the nonfederal share of the costs of the services.

95 Acts, ch 68, §3

Appropriation to fund the costs under subsection 4 from the property tax relief fund created in §426B.1; continued effectiveness of county property tax limitations; 95 Acts, ch 202, §13-15; 95 Acts, ch 206, §35; 95 Acts, ch 209, §30

Subsection 3 amended

249A.28 Reserved.

HOME AND COMMUNITY-BASED SERVICES — RECORDS CHECKS

249A.29 Home and community-based services waiver providers — records checks.

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

a. "Consumer" means an individual approved by the department to receive services under a waiver.

b. "Provider" means an agency certified by the department to provide services under a waiver.

c. "Waiver" means a home and community-based services waiver approved by the federal government and implemented under the medical assistance program.

2. If a person is being considered by a provider for employment involving direct responsibility for a consumer or with access to a consumer when the consumer is alone, and if the person has been convicted of a crime or has a record of founded child or dependent adult abuse, the department shall perform an evaluation to determine whether the crime or

founded abuse warrants prohibition of employment by the provider. The department shall conduct criminal and child and dependent adult abuse records checks of the person in this state and may conduct these checks in other states. The records checks and evaluations required by this section shall be performed in accordance with procedures adopted for this purpose by the department.

3. If the department determines that a person employed by a provider has committed a crime or has a record of founded abuse, the department shall perform an evaluation to determine whether prohibition of the person's employment is warranted.

4. In an evaluation, the department shall consider the nature and seriousness of the crime or founded abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded abuse again, and the number of crimes or founded abuses committed by the person involved. The department may permit a person who is evaluated to be employed or to continue to be employed by the provider if the person complies with the department's conditions relating to the employment, which may include completion of additional training.

5. If the department determines that the person has committed a crime or has a record of founded abuse which warrants prohibition of employment, the person shall not be employed by a provider.

95 Acts, ch 93, §5
NEW section

CHAPTER 249C

JOBS PROGRAM

Requests for federal waivers relating to limited benefit plans and to additional residence, education, and work requirements; rules; applicability; schedule; 95 Acts, ch 53; 95 Acts, ch 116

CHAPTER 252

SUPPORT OF THE POOR

252.16 Settlement — how acquired.

A legal settlement in this state may be acquired as follows:

1. A person continuously residing in a county in this state for a period of one year acquires a settlement in that county except as provided in subsection 7 or 8.

2. A person having acquired a settlement in a county of this state shall not acquire a settlement in any other county until the person has continuously

resided in the other county for a period of one year except as provided in subsection 7.

3. A person who is an inpatient, a resident, or an inmate of or is supported by an institution whether organized for pecuniary profit or not or an institution supported by charitable or public funds in a county in this state does not acquire a settlement in the county unless the person before becoming an inpatient, a resident, or an inmate in the institution or being supported by an institution has a settlement in the

county. A minor child residing in an institution assumes the settlement of the child's custodial parent. Settlement of the minor child changes with the settlement of the child's custodial parent, except that the child retains the settlement that the child's custodial parent has on the child's eighteenth birthday until the child is discharged from the institution, at which time the child acquires the child's own settlement by continuously residing in a county for one year.

4. Minor children who reside with both parents take the settlement of the parents. If the minor child resides on a permanent basis with only one parent or a guardian, the minor child takes the settlement of the parent or guardian with whom the child resides.

An emancipated minor acquires a legal settlement in the minor's own right. An emancipated minor is one who is absent from the minor's parents with the consent of the parents, is self-supporting, and has assumed a new relationship inconsistent with being a part of the family of the parents.

A minor, placed in the care of a public agency or facility as custodian or guardian, takes the legal settlement that the parents had upon severance of the parental relationship, and retains that legal settlement until a natural person is appointed custodian or guardian at which time the minor takes the legal settlement of the natural person or until the minor person attains the age of eighteen and acquires another legal settlement in the person's own right.

5. A person with settlement in this state who becomes a member on active duty of an armed service of the United States retains the settlement during the period of active duty. A person without settlement in this state who is a member on active duty of an armed service of the United States within the borders of this state does not acquire settlement during the period of active duty.

6. *a.* Subsections 1, 2, 3, 7, and 8 do not apply to a blind person who is receiving assistance under the laws of this state.

b. A blind person who has resided in one county of this state for a period of six months acquires legal

settlement for support as provided in this chapter, except as specified in paragraph "c".

c. A blind person who is an inpatient or resident of, is supported by, or is receiving treatment or support services from a state hospital-school created under chapter 222, a state mental health institute created under chapter 226, the Iowa braille and sight saving school administered by the state board of regents, or any community-based provider of treatment or services for mental retardation, developmental disabilities, mental health, or substance abuse, does not acquire legal settlement in the county in which the institution, facility, or provider is located, unless the blind person has resided in the county in which the institution, facility, or provider is located for a period of six months prior to the date of commencement of receipt of assistance under the laws of this state or for a period of six months subsequent to the date of termination of assistance under the laws of this state.

7. A person hospitalized in or receiving treatment at a state mental health institute or state hospital-school does not acquire legal settlement in the county in which the institute or hospital-school is located unless the person is discharged from the institute or hospital-school, continuously resides in the county for a period of one year subsequent to the discharge, and during that year is not hospitalized in and does not receive treatment at the institute or hospital-school.

8. A person receiving treatment or support services from any community-based provider of treatment or services for mental retardation, developmental disabilities, mental health, or substance abuse does not acquire legal settlement in the host county unless the person continuously resides in the host county for one year from the date of the last treatment or support service received by the person.

95 Acts, ch 119, §2
 Applicability of 1995 amendments to subsection 6; redetermination of legal settlement for certain blind persons; exception to §252.17; 95 Acts, ch 119, §4-6
 Subsection 6 amended

CHAPTER 252A

UNIFORM SUPPORT OF DEPENDENTS LAW

252A.3A Establishing paternity by affidavit.

1. The paternity of a child born out of wedlock may be legally established by the completion and filing of an affidavit of paternity only as provided by this section.

2. When paternity has not been legally established, paternity may be established by affidavit under this section for the following children:

a. The child of a woman who was unmarried at the time of conception and birth of the child.

b. The child of a woman who is married at the time of conception or birth of the child if a court of competent jurisdiction has determined that the in-

dividual to whom the mother was married at that time is not the father of the child.

3. *a.* Prior to or at the time of completion of an affidavit of paternity, written information about paternity establishment, developed by the child support recovery unit created in section 252B.2, shall be provided to the mother and putative father.

b. The information provided shall include a description of parental rights and responsibilities, including the duty to provide financial support for the child, and the benefits of establishing paternity.

c. Copies of the written information shall be made available by the child support recovery unit or the

Iowa department of public health to those entities where an affidavit of paternity may be obtained as provided under subsection 4.

4. *a.* The affidavit of paternity form developed and used by the Iowa department of public health is the only affidavit of paternity form recognized for the purpose of establishing paternity under this section.

b. The form shall be available from the state registrar, each county registrar, the child support recovery unit, and any institution in the state.

c. The Iowa department of public health shall make copies of the form available to the entities identified in paragraph "b" for distribution.

5. A completed affidavit of paternity shall contain or have attached all of the following:

a. A statement by the mother consenting to the assertion of paternity and the identity of the father and acknowledging either of the following:

(1) That the mother was unmarried at the time of conception and birth of the child.

(2) That the mother was married at the time of conception or birth of the child, and that a court order has been entered ruling that the individual to whom the mother was married at that time is not the father of the child.

b. If paragraph "a", subparagraph (2), is applicable, a certified copy of the filed order ruling that the husband is not the father of the child.

c. A statement from the putative father that the putative father is the father of the child.

d. The name of the child at birth and the child's birth date.

e. The signatures of the mother and putative father.

f. The social security numbers of the mother and putative father.

g. The addresses of the mother and putative father, as available.

h. The signature of a notary public attesting to the identities of the parties signing the affidavit of paternity.

i. Instructions for filing the affidavit.

6. A completed affidavit of paternity shall be filed with the state registrar. However, if the affidavit of paternity is obtained directly from the county registrar, the completed affidavit may be filed with the county registrar who shall forward the original affidavit to the state registrar. For the purposes of legal establishment of paternity under this section, paternity is legally established only upon filing of the affidavit with the state registrar.

7. The state registrar shall make copies of affidavits of paternity and identifying information from the affidavits filed pursuant to this section available to the child support recovery unit created under section 252B.2 in accordance with section 144.13, subsection 4.

8. An affidavit of paternity completed and filed pursuant to this section has all of the following effects:

a. Is admissible as evidence of paternity.

b. Has the same legal force and effect as a judicial determination of paternity.

c. Serves as a basis for seeking child or medical support without further determination of paternity.

9. All institutions in the state shall provide the following services with respect to any newborn child born out of wedlock:

a. Prior to discharge of the newborn from the institution, the institution where the birth occurs shall provide the mother and, if present, the putative father, with all of the following:

(1) Written information about establishment of paternity pursuant to subsection 3.

(2) An affidavit of paternity form.

(3) An opportunity for consultation with the staff of the institution regarding the written information provided under subparagraph (1).

(4) An opportunity to complete an affidavit of paternity at the institution, as provided in this section.

b. The institution shall file any affidavit of paternity completed at the institution with the state registrar, pursuant to subsection 6, accompanied by a copy of the child's birth certificate, within ten days of the birth of the child.

10. *a.* An institution may be reimbursed by the child support recovery unit created in section 252B.2 for providing the services described under subsection 9, or may provide the services at no cost.

b. An institution electing reimbursement shall enter into a written agreement with the child support recovery unit for this purpose.

c. An institution entering into an agreement for reimbursement shall assist the parents of a child born out of wedlock in completing and filing an affidavit of paternity.

d. Reimbursement shall be based only on the number of affidavits completed in compliance with this section and submitted to the state registrar during the duration of the written agreement with the child support recovery unit.

e. The reimbursement rate is twenty dollars for each completed affidavit filed with the state registrar.

95 Acts, ch 52, §2

Subsection 2, unnumbered paragraph 1 amended

252A.6A Additional provisions regarding paternity establishment.

1. When a court of this state is acting as the responding state in an action initiated under this chapter to establish paternity, all of the following shall apply:

a. Except with the consent of all parties, the trial shall not be held until after the birth of the child and shall be held no earlier than twenty days from the date the respondent is served with notice of the action or, if blood or genetic tests are conducted, no earlier than fifty days from the date the test results are filed with the clerk of the district court as provided under section 600B.41.

b. If the respondent, after being served with notice as required under section 252A.6, fails to timely respond to the notice, or to appear for blood or genetic

tests pursuant to a court or administrative order, or to appear at a scheduled hearing after being provided notice of the hearing, the court shall find the respondent in default, and shall enter an order establishing paternity and establishing the monthly child support payment and the amount of the support debt accrued and accruing pursuant to section 598.21, subsection 4, or medical support pursuant to chapter 252E, or both.

2. When a court of this state is acting as the responding state in an action initiated under this chapter to establish child or medical support based on a prior determination of paternity and the respondent files an answer to the notice required under section 252A.6 denying paternity, all of the following shall apply:

a. (1) If the prior determination of paternity is based on an affidavit of paternity filed pursuant to section 252A.3A, or an administrative order entered pursuant to chapter 252F, or an order by the courts of this state, or by operation of law when the mother and established father are or were married to each

other, the provisions of section 600B.41A are applicable.

(2) If the court determines that the prior determination of paternity should not be overcome, pursuant to section 600B.41A, and that the respondent has a duty to provide support, the court shall enter an order establishing the monthly child support payment and the amount of the support debt accrued and accruing pursuant to section 598.21, subsection 4, or medical support pursuant to chapter 252E, or both.

b. If the prior determination of paternity is based on an administrative or court order or by any other means, pursuant to the laws of a foreign jurisdiction, an action to overcome the prior determination of paternity shall be filed in that jurisdiction. Unless the respondent requests and is granted a stay of an action initiated under this chapter to establish child or medical support, the action shall proceed as otherwise provided in this chapter.

95 Acts, ch 67, §18

Subsection 2, paragraph a amended

CHAPTER 252B

CHILD SUPPORT RECOVERY

Alternative to payment of fees by nonpublic assistance recipients; implementation by July 1, 1996; 95 Acts, ch 115, §13

CHAPTER 252C

CHILD SUPPORT DEBTS — ADMINISTRATIVE PROCEDURES

252C.3 Notice of support debt — failure to respond — hearing — order.

1. The administrator may issue a notice stating the intent to secure an order for either payment of medical support established as defined in chapter 252E or payment of an accrued or accruing support debt due and owed to the department or an individual under section 252C.2, or both. The notice shall be served upon the responsible person in accordance with the rules of civil procedure. The notice shall include all of the following:

a. A statement that the support obligation will be set pursuant to the child support guidelines established pursuant to section 598.21, subsection 4, and the criteria established pursuant to section 252B.7A, and that the responsible person is required to provide medical support in accordance with chapter 252E.

b. The name of a public assistance recipient and the name of the dependent child or caretaker for whom the public assistance is paid.

c. (1) A statement that if the responsible person desires to discuss the amount of support that the responsible person should be required to pay, the responsible person may, within ten days after being

served, contact the office of the child support recovery unit which sent the notice and request a negotiation conference.

(2) A statement that if a negotiation conference is requested, then the responsible person shall have ten days from the date set for the negotiation conference or twenty days from the date of service of the original notice, whichever is later, to send a request for a hearing to the office of the child support recovery unit which issued the notice.

(3) A statement that after the holding of the negotiation conference, the administrator may issue a new notice and finding of financial responsibility for child support or medical support, or both, to be sent to the responsible person by regular mail addressed to the responsible person's last known address, or if applicable, to the last known address of the responsible person's attorney.

(4) A statement that if the administrator issues a new notice and finding of financial responsibility for child support or medical support, or both, then the responsible person shall have ten days from the date of issuance of the new notice or twenty days from the date of service of the original notice, whichever is

later, to send a request for a hearing to the office of the child support recovery unit which issued the notice.

d. A statement that if the responsible person objects to all or any part of the notice or finding of financial responsibility for child support or medical support, or both, and a negotiation conference is not requested, the responsible person shall, within twenty days of the date of service send to the office of the child support recovery unit which issued the notice a written response setting forth any objections and requesting a hearing.

e. A statement that if a timely written request for a hearing is received by the office of the child support recovery unit which issued the notice, the responsible person shall have the right to a hearing to be held in district court; and that if no timely written response is received, the administrator may enter an order in accordance with the notice and finding of financial responsibility for child support or medical support, or both.

f. A statement that, as soon as the order is entered, the property of the responsible person is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.

g. A statement that the responsible person shall notify the administrator of any change of address, employment, or medical coverage as required by chapter 252E.

h. A statement that if the responsible person has any questions, the responsible person should telephone or visit an office of the child support recovery unit or consult an attorney.

i. Such other information as the administrator finds appropriate.

2. The time limitations for requesting a hearing in subsection 1 may be extended by the administrator.

3. If a timely written response setting forth objections and requesting a hearing is received by the appropriate office of the child support recovery unit, a hearing shall be held in district court.

4. If timely written response and request for hearing is not received by the appropriate office of the child support recovery unit, the administrator may enter an order in accordance with the notice, and shall specify all of the following:

a. The amount of monthly support to be paid, with directions as to the manner of payment.

b. The amount of the support debt accrued and accruing in favor of the department.

c. The name of the custodial parent or agency having custody of the dependent child and the name and birth date of the dependent child for whom support is to be paid.

d. That the property of the responsible person is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.

e. The medical support required pursuant to chapter 598 and rules adopted pursuant to chapter 252E.

5. The responsible person shall be sent a copy of the order by regular mail addressed to the respon-

sible person's last known address, or if applicable, to the last known address of the responsible person's attorney. The order is final, and action by the administrator to enforce and collect upon the order, including arrearages and medical support, or both, may be taken from the date of issuance of the order.

95 Acts, ch 52, §3, 4

Subsection 1, paragraph a amended

Subsection 1, paragraph c stricken and paragraphs d-j relettered as c-i

252C.4 Certification to court — hearing — default.

1. A responsible person or the child support recovery unit may request a hearing regarding a determination of support. If a timely written request for a hearing is received, the administrator shall certify the matter to the district court as follows:

a. If the child or children reside in Iowa, and the unit is seeking an accruing obligation, in the county in which the dependent child or children reside.

b. If the child or children received public assistance in Iowa, and the unit is seeking only an accrued obligation, in the county in which the dependent child or children last received public assistance.

c. If the action is the result of a request from a foreign jurisdiction to establish support by a responsible person located in Iowa, in the county in which the responsible person resides.

2. The certification shall include true copies of the notice and finding of financial responsibility or notice of the support debt accrued and accruing, the return of service, the written objections and request for hearing, and true copies of any administrative orders previously entered.

3. The court shall set the matter for hearing and notify the parties of the time and place of hearing.

4. The court shall establish the monthly child support payment and the amount of the support debt accrued and accruing pursuant to section 598.21, subsection 4, or medical support pursuant to chapter 252E, or both.

5. If a party fails to appear at the hearing; upon a showing of proper notice to that party, the court shall find that party in default and enter an appropriate order.

6. Actions initiated by the administrator under this chapter are not subject to chapter 17A and resulting court hearings following certification shall be an original hearing before the district court.

7. If a responsible person contests an action initiated under this chapter by denying paternity, the following shall apply, as necessary:

a. (1) If the prior determination of paternity is based on an affidavit of paternity filed pursuant to section 252A.3A, or an administrative order entered pursuant to chapter 252F, or an order by the courts of this state, or by operation of law when the mother and established father are or were married to each other, the provisions of section 600B.41A are applicable.

(2) If the court determines that the prior determination of paternity should not be overcome pursuant to section 600B.41A, and that the responsible

person has a duty to provide support, the court shall enter an order establishing the monthly child support payment and the amount of the support debt accrued and accruing pursuant to section 598.21, subsection 4, or medical support pursuant to chapter 252E, or both.

b. If the prior determination of paternity is based on an administrative or court order or other means, pursuant to the laws of a foreign jurisdiction, an

action to overcome the prior determination of paternity shall be filed in that jurisdiction. Unless the responsible person requests and is granted a stay of an action initiated under this chapter to establish child or medical support, the action shall proceed as otherwise provided by this chapter.

95 Acts, ch 67, §19

Subsection 7, paragraph a amended

CHAPTER 252D

CHILD SUPPORT PAYMENTS — ASSIGNMENT OF INCOME AND IMMEDIATE INCOME WITHHOLDING

252D.17 Notice to employer or income payor — duties and liability — criminal penalty.

The child support recovery unit or the district court shall provide notice by sending a copy of the order for income withholding to the obligor's employer, trustee, or other payor of income by regular mail, with proof of service completed according to rule of civil procedure 82. The order may be sent to the employer, trustee, or other payor of income on the same date that the order is sent to the clerk of court for filing. In addition to the amount to be withheld for payment of support, the order shall include all of the following information regarding the duties of the payor in implementing the withholding order:

1. The withholding order for child support has priority over a garnishment or an assignment for a purpose other than the support of the dependents in the court order being enforced.

2. As reimbursement for the payor's processing costs, the payor may deduct a fee of no more than two dollars for each payment in addition to the amount withheld for support.

3. The amount withheld for support, including the processing fee, shall not exceed the amounts specified in 15 U.S.C. § 1673(b).

4. The income withholding order is binding on an existing or future employer, trustee, or other payor ten days after receipt of the copy of the order, and is binding whether or not the copy of the order received is file-stamped.

5. The payor shall send the amounts withheld to the collection services center or the clerk of the district court within ten working days of the date the obligor is paid.

6. The payor may combine amounts withheld from the obligor's wages in a single payment to the clerk of the district court or to the collection services center, as appropriate. Whether combined or separate, payments shall be identified by the name of the obligor, account number, amount, and the date withheld. If payments for multiple obligors are combined, the portion of the payment attributable to each obligor shall be specifically identified.

7. The payor shall deliver or send a copy of the order to the person named in the order within one business day after receipt of notice.

8. The withholding is binding on the payor until further notice by the court or the child support recovery unit.

9. If the payor fails to withhold income in accordance with the provisions of the order, the payor is liable for the accumulated amount which should have been withheld, together with costs, interest, and reasonable attorney fees related to the collection of the amounts due from the payor.

10. The payor shall promptly notify the court or the child support recovery unit when the obligor's employment or other income terminates, and provide the obligor's last known address and the name and address of the obligor's new employer, if known.

11. Any payor who discharges an obligor, refuses to employ an obligor, or takes disciplinary action against an obligor based upon income withholding is guilty of a simple misdemeanor. A withholding order has the same force and effect as any other district court order, including, but not limited to, contempt of court proceedings for noncompliance.

95 Acts, ch 52, §5, 6

Unnumbered paragraph 1 and subsection 4 amended

252D.23 Filing of withholding order — order effective as district court order.

An income withholding order entered by the child support recovery unit pursuant to this chapter shall be filed with the clerk of the district court. For the purposes of demonstrating compliance by the employer, trustee, or other payor, the copy of the withholding order received, whether or not the copy is file-stamped, shall have all the force, effect, and attributes of a docketed order of the district court including, but not limited to, availability of contempt of court proceedings against an employer, trustee, or other payor for noncompliance. However, any information contained in the income withholding order related to the amount of the accruing or accrued support obligation which does not reflect the correct amount of support due does not modify the underlying support judgment.

95 Acts, ch 52, §7

Section amended

CHAPTER 252H

ADJUSTMENT AND MODIFICATION OF SUPPORT ORDERS

252H.10 Effective date of adjustment — modification.

Pursuant to section 598.21, subsection 8, any administrative or court order resulting from an action initiated under this chapter may be made retroactive only to the date that all parties were successfully served the notice required under section 252H.15 or section 252H.19, as applicable.

The periodic due date established under a prior order for payment of child support shall not be changed in any order modified as a result of an action initiated under this chapter, unless the child support

recovery unit or the court determines that good cause exists to change the periodic due date. If the unit or the court determines that good cause exists, the unit or the court shall include the rationale for the change in the modified order and shall address the issue of reconciliation of any payments due or made under a prior order which would result in payment of the child support obligation under both the prior and the modified orders.

95 Acts, ch 115, §10
NEW unnumbered paragraph 2

CHAPTER 252J

CHILD SUPPORT — LICENSING SANCTIONS

252J.1 Definitions.

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

1. "*Certificate of noncompliance*" means a document provided by the child support recovery unit certifying that the named obligor is not in compliance with a support order or with a written agreement for payment of support entered into by the unit and the obligor.

2. "*License*" means a license, certification, registration, permit, approval, renewal, or other similar authorization issued to an obligor by a licensing authority which evidences the admission to, or granting of authority to engage in, a profession, occupation, business, or industry, or to operate or register a motor vehicle. "*License*" does not mean or include licenses for hunting, fishing, boating, or other recreational activity.

3. "*Licensee*" means an obligor to whom a license has been issued, or who is seeking the issuance of a license.

4. "*Licensing authority*" means a county treasurer, the supreme court, or an instrumentality, agency, board, commission, department, officer, organization, or any other entity of the state, which has authority within this state to suspend or revoke a license or to deny the renewal or issuance of a license authorizing an obligor to register or operate a motor vehicle or to engage in a business, occupation, profession, or industry.

5. "*Obligor*" means a natural person as defined in section 252G.1 who has been ordered by a court or administrative authority to pay support.

6. "*Support*" means support or support payments as defined in section 252D.1, whether established through court or administrative order.

7. "*Support order*" means an order for support issued pursuant to chapter 232, 234, 252A, 252C,

252D, 252E, 252F, 252H, 598, 600B, or any other applicable chapter, or under a comparable statute of a foreign jurisdiction as registered with the clerk of the district court or certified to the child support recovery unit.

8. "*Unit*" means the child support recovery unit created in section 252B.2.

9. "*Withdrawal of a certificate of noncompliance*" means a document provided by the unit certifying that the certificate of noncompliance is withdrawn and that the licensing authority may proceed with issuance, reinstatement, or renewal of an obligor's license.

95 Acts, ch 115, §1
NEW section

252J.2 Purpose and use.

1. Notwithstanding other statutory provisions to the contrary, and if an obligor has not been cited for contempt and enjoined from engaging in the activity governed by a license pursuant to section 598.23A, the unit may utilize the process established in this chapter to collect support.

2. An obligor is subject to the provisions of this chapter if the obligor's support obligation is being enforced by the unit, if the support payments required by a support order to be paid to the clerk of the district court or the collection services center pursuant to section 598.22 are not paid and become delinquent in an amount equal to the support payment for ninety days, and if the obligor's situation meets other criteria specified under rules adopted by the department pursuant to chapter 17A. The criteria specified by rule shall include consideration of the length of time since the obligor's last support payment and the total amount of support owed by the obligor.

3. Actions initiated by the unit under this chapter shall not be subject to contested case proceedings or

further review pursuant to chapter 17A and any resulting court hearing shall be an original hearing before the district court.

4. Notwithstanding the confidentiality provisions of chapter 252B or 422, or any other statutory provision pertaining to the confidentiality of records, a licensing authority shall exchange information with the unit through manual or automated means. Information exchanged under this chapter for the purposes of this chapter or chapter 598 shall be used solely for the purpose of identifying licensees subject to enforcement pursuant to this chapter or chapter 598.

95 Acts, ch 115, §2
NEW section

252J.3 Notice to obligor of potential sanction of license.

The unit shall proceed in accordance with this chapter only if notice is served on the obligor in accordance with R.C.P. 56.1 or notice is sent by certified mail addressed to the obligor's last known address and served upon any person who may accept service under R.C.P. 56.1. Return acknowledgment is required to prove service by certified mail. The notice shall include all of the following:

1. The address and telephone number of the unit and the unit case number.
2. A statement that the obligor is not in compliance with a support order.
3. A statement that the obligor may request a conference with the unit to contest the action.
4. A statement that if, within twenty days of service of notice on the obligor, the obligor fails to contact the unit to schedule a conference, the unit shall issue a certificate of noncompliance, bearing the obligor's name, social security number, unit case number, and the docket number of a support order requiring the obligor to pay support, to any appropriate licensing authority, certifying that the obligor is not in compliance with a support order.
5. A statement that in order to stay the issuance of a certificate of noncompliance the request for a conference shall be in writing and shall be received by the unit within twenty days of service of notice on the obligor.
6. The names of the licensing authorities to which the unit intends to issue a certificate of noncompliance.

7. A statement that if the unit issues a certificate of noncompliance to an appropriate licensing authority, the licensing authority shall initiate proceedings to refuse to issue or renew, or to suspend or revoke the obligor's license, unless the unit provides the licensing authority with a withdrawal of a certificate of noncompliance.

95 Acts, ch 115, §3
NEW section

252J.4 Conference.

1. The obligor may schedule a conference with the unit following service of notice pursuant to section 252J.3, or at any time after service of notice of sus-

pension, revocation, denial of issuance, or nonrenewal of a license from a licensing authority, to challenge the unit's actions under this chapter.

2. The request for a conference shall be made to the unit, in writing, and, if requested after service of a notice pursuant to section 252J.3, shall be received by the unit within twenty days following service of notice.

3. The unit shall notify the obligor of the date, time, and location of the conference by regular mail, with the date of the conference to be no earlier than ten days following issuance of notice of the conference by the unit. If the obligor fails to appear at the conference, the unit shall issue a certificate of noncompliance.

4. Following the conference, the unit shall issue a certificate of noncompliance unless any of the following applies:

- a. The unit finds a mistake in the identity of the obligor.
- b. The unit finds a mistake in determining that the amount of delinquent support is equal to or greater than ninety days.
- c. The obligor enters a written agreement with the unit to comply with a support order, the obligor complies with an existing written agreement to comply with a support order, or the obligor pays the total amount of delinquent support due.
- d. Issuance of a certificate of noncompliance is not appropriate under other criteria established in accordance with rules adopted by the department pursuant to chapter 17A.

5. The unit shall grant the obligor a stay of the issuance of a certificate of noncompliance upon receiving a timely written request for a conference, and if a certificate of noncompliance has previously been issued, shall issue a withdrawal of a certificate of noncompliance if the obligor enters into a written agreement with the unit to comply with a support order.

6. If the obligor does not timely request a conference or pay the total amount of delinquent support owed within twenty days of service of the notice pursuant to section 252J.3, the unit shall issue a certificate of noncompliance.

95 Acts, ch 115, §4; 95 Acts, ch 209, §23
NEW section
Subsection 4, paragraph b amended

252J.5 Written agreement.

1. If an obligor is subject to this chapter as established in section 252J.2, the obligor and the unit may enter into a written agreement for payment of support and compliance which takes into consideration the obligor's ability to pay and other criteria established by rule of the department. The written agreement shall include all of the following:

a. The method, amount, and dates of support payments by the obligor.

b. A statement that upon breach of the written agreement by the obligor, the unit shall issue a certificate of noncompliance to any appropriate licensing authority.

2. A written agreement entered into pursuant to this section does not preclude any other remedy provided by law and shall not modify or affect an existing support order.

3. Following issuance of a certificate of noncompliance, if the obligor enters into a written agreement with the unit, the unit shall issue a withdrawal of the certificate of noncompliance and shall forward a copy of the withdrawal by regular mail to the obligor and any appropriate licensing authority.

95 Acts, ch 115, §5
NEW section

252J.6 Decision of the unit.

1. If an obligor is not in compliance with a support order pursuant to section 252J.2, the unit notifies the obligor pursuant to section 252J.3, and the obligor requests a conference pursuant to section 252J.4, the unit shall issue a written decision if any of the following conditions exists:

- a. The obligor fails to appear at a scheduled conference under section 252J.4.
- b. A conference is held under section 252J.4.
- c. The obligor fails to comply with a written agreement entered into by the obligor and the unit under section 252J.5.

2. The unit shall send a copy of the written decision to the obligor by regular mail at the obligor's most recent address of record. If the decision is made to issue a certificate of noncompliance or to withdraw the certificate of noncompliance, a copy of the certificate of noncompliance or of the withdrawal of the certificate of noncompliance shall be attached to the written decision. The written decision shall state all of the following:

- a. That a copy of the certificate of noncompliance or withdrawal of the certificate of noncompliance has been provided to the licensing authorities named in the notice provided pursuant to section 252J.3.
- b. That upon receipt of a certificate of noncompliance, the licensing authority shall initiate proceedings to suspend, revoke, deny issuance, or deny renewal of a license, unless the licensing authority is provided with a withdrawal of a certificate of noncompliance from the unit.
- c. That in order to obtain a withdrawal of a certificate of noncompliance from the unit, the obligor shall enter into a written agreement with the unit, comply with an existing written agreement with the unit, or pay the total amount of delinquent support owed.
- d. That if the unit issues a written decision, which includes a certificate of noncompliance that all of the following apply:

(1) The obligor may request a hearing as provided in section 252J.9, before the district court in the county in which the underlying support order is filed, by filing a written application to the court challenging the issuance of the certificate of noncompliance by the unit and sending a copy of the application to the unit within the time period specified in section 252J.9.

(2) The obligor may retain an attorney at the obligor's own expense to represent the obligor at the hearing.

(3) The scope of review of the district court shall be limited to demonstration of a mistake of fact related to the delinquency of the obligor.

3. If the unit issues a certificate of noncompliance, the unit shall only issue a withdrawal of the certificate of noncompliance if any of the following applies:

- a. The unit or the court finds a mistake in the identity of the obligor.
- b. The unit or the court finds a mistake in determining that the amount of delinquent support due is equal to or greater than ninety days.
- c. The obligor enters a written agreement with the unit to comply with a support order, the obligor complies with an existing written agreement to comply with a support order, or the obligor pays the total amount of delinquent support owed.
- d. Issuance of a withdrawal of the certificate of noncompliance is appropriate under other criteria in accordance with rules adopted by the department pursuant to chapter 17A.

95 Acts, ch 115, §6; 95 Acts, ch 209, §24
NEW section
Subsection 3, paragraph b amended

252J.7 Certificate of noncompliance — certification to licensing authority.

1. If the obligor fails to respond to the notice of potential license sanction provided pursuant to section 252J.3 or the unit issues a written decision under section 252J.6 which states that the obligor is not in compliance, the unit shall certify, in writing, to any appropriate licensing authority that the support obligor is not in compliance with a support order and shall include a copy of the certificate of noncompliance.

2. The certificate of noncompliance shall contain the obligor's name, social security number, and the docket number of the applicable support order.

3. The certificate of noncompliance shall require all of the following:

- a. That the licensing authority initiate procedures for the revocation or suspension of the obligor's license, or for the denial of the issuance or renewal of a license using the licensing authority's procedures.
- b. That the licensing authority provide notice to the obligor, as provided in section 252J.8, of the intent to suspend, revoke, deny issuance, or deny renewal of a license including the effective date of the action. The suspension, revocation, or denial shall be effective no sooner than thirty days following provision of notice to the obligor.

95 Acts, ch 115, §7
NEW section

252J.8 Requirements and procedures of licensing authority.

1. A licensing authority shall maintain records of licensees by name, current known address, and social security number.

2. In addition to other grounds for suspension, revocation, or denial of issuance or renewal of a license, a licensing authority shall include in rules adopted by the licensing authority as grounds for suspension, revocation, or denial of issuance or renewal of a license, the receipt of a certificate of noncompliance from the unit.

3. The supreme court shall prescribe rules for admission of persons to practice as attorneys and counselors pursuant to chapter 602, article 10, which include provisions, as specified in this chapter, for the denial, suspension, or revocation of the admission for failure to comply with a child support order.

4. A licensing authority that is issued a certificate of noncompliance shall initiate procedures for the suspension, revocation, or denial of issuance or renewal of licensure to an obligor. The licensing authority shall utilize existing rules and procedures for suspension, revocation, or denial of the issuance or renewal of a license.

In addition, the licensing authority shall provide notice to the obligor of the licensing authority's intent to suspend, revoke, or deny issuance or renewal of a license under this chapter. The suspension, revocation, or denial shall be effective no sooner than thirty days following provision of notice to the obligor. The notice shall state all of the following:

a. The licensing authority intends to suspend, revoke, or deny issuance or renewal of an obligor's license due to the receipt of a certificate of noncompliance from the unit.

b. The obligor must contact the unit to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance.

c. Unless the unit furnishes a withdrawal of a certificate of noncompliance to the licensing authority within thirty days of the issuance of the notice under this section, the obligor's license will be revoked, suspended, or denied.

d. If the licensing authority's rules and procedures conflict with the additional requirements of this section, the requirements of this section shall apply. Notwithstanding section 17A.18, the obligor does not have a right to a hearing before the licensing authority to contest the authority's actions under this chapter but may request a court hearing pursuant to section 252J.9 within thirty days of the provision of notice under this section.

5. If the licensing authority receives a withdrawal of a certificate of noncompliance from the unit, the licensing authority shall immediately reinstate, renew, or issue a license if the obligor is oth-

erwise in compliance with licensing requirements established by the licensing authority.

95 Acts, ch 115, §8
NEW section

252J.9 District court hearing.

1. Following the issuance of a written decision by the unit under section 252J.6 which includes the issuance of a certificate of noncompliance, or following provision of notice to the obligor by a licensing authority pursuant to section 252J.8, an obligor may seek review of the decision and request a hearing before the district court in the county in which the underlying support order is filed, by filing an application with the district court, and sending a copy of the application to the unit by regular mail. An application shall be filed to seek review of the decision by the unit or following issuance of notice by the licensing authority no later than within thirty days after the issuance of the notice pursuant to section 252J.8. The clerk of the district court shall schedule a hearing and mail a copy of the order scheduling the hearing to the obligor and the unit and shall also mail a copy of the order to the licensing authority, if applicable. The unit shall certify a copy of its written decision and certificate of noncompliance, indicating the date of issuance, and the licensing authority shall certify a copy of a notice issued pursuant to section 252J.8, to the court prior to the hearing.

2. The filing of an application pursuant to this section shall automatically stay the actions of a licensing authority pursuant to section 252J.8. The hearing on the application shall be scheduled and held within thirty days of the filing of the application. However, if the obligor fails to appear at the scheduled hearing, the stay shall be lifted and the licensing authority shall continue procedures pursuant to section 252J.8.

3. The scope of review by the district court shall be limited to demonstration of a mistake of fact relating to the delinquency of the obligor. Issues related to visitation, custody, or other provisions not related to the support provisions of a support order are not grounds for a hearing under this chapter.

4. Support orders shall not be modified by the court in a hearing under this chapter.

5. If the court finds that the unit was in error in issuing a certificate of noncompliance, or in failing to issue a withdrawal of a certificate of noncompliance, the unit shall issue a withdrawal of a certificate of noncompliance to the appropriate licensing authority.

95 Acts, ch 115, §9
NEW section

CHAPTER 256

DEPARTMENT OF EDUCATION

256.3 State board established.

The state board of education is established for the department. The state board consists of nine mem-

bers appointed by the governor subject to senate confirmation. The members shall be registered voters of the state and hold no other elective or appoint-

ive state office. A member shall not be engaged in professional education for a major portion of the member's time nor shall the member derive a major portion of income from any business or activity connected with education. Not more than five members shall be of the same political party.

The terms of office are for six years beginning and ending as provided in section 69.19.

Three of the state board members shall have substantial knowledge related to the community college system. The remaining six members shall be members of the general public.

95 Acts, ch 49, §4
Unnumbered paragraph 1 amended

256.11A Guidance program — media services program — waiver.

1. Schools and school districts unable to meet the standard adopted by the state board requiring each school or school district operating a kindergarten through grade twelve program to provide an articulated sequential elementary-secondary guidance program may, not later than August 1, 1995, for the school year beginning July 1, 1995, file a written request to the department of education that the department waive the requirement for that school or school district. The procedures specified in subsection 3 apply to the request. Not later than August 1, 1996, for the school year beginning July 1, 1996, the board of directors of a school district or the authorities in charge of a nonpublic school may request a one-year extension of the waiver.

2. Not later than August 1, 1995, for the school year beginning July 1, 1995, the board of directors of a school district, or authorities in charge of a nonpublic school, may file a written request with the department of education that the department waive the rule adopted by the state board to establish and operate a media services program to support the total curriculum for that district or school. The procedures specified in subsection 3 apply to the request. Not later than August 1, 1996, for the school year beginning July 1, 1996, the board of directors of a school district or the authorities in charge of a nonpublic school may request an additional one-year extension of the waiver.

3. A request for a waiver filed by the board of directors of a school district or authorities in charge of a nonpublic school shall describe actions being taken by the district or school to meet the requirement for which the district or school has requested a waiver.

95 Acts, ch 96, §1
Subsections 1 and 2 amended

256.33 Educational technology assistance.

The department shall consort with school districts, area education agencies, community colleges, and colleges and universities to provide assistance to them in the use of educational technology for instruction purposes. The department shall consult with the advisory committee on telecommunications, established in section 256.7, subsection 7, and other users

of educational technology on the development and operation of programs under this section.

If moneys are appropriated by the general assembly for a fiscal year for purposes provided in this section, the programs funded by the department may include but not be limited to:

1. The development and delivery of in-service training, including summer institutes and workshops for individuals employed by elementary, secondary, and higher education corporations and institutions who are using educational technology for instructional purposes. The in-service programs shall include the use of hardware as well as effective methods of delivery and maintenance of a learning environment.

2. Research projects on ways to improve instruction at all educational levels using educational technology.

3. Demonstration projects which model effective uses of educational technology.

4. Establishment of a clearinghouse for information and research concerning practices relating to and uses of educational technology.

5. Development of curricula that could be used by approved teacher preparation institutions to prepare teachers to use educational technology in the classroom.

6. Pursuit of additional funding from public and private sources for the functions listed in this section.

Priority shall be given to programs integrating telecommunications into the classroom. The department may award grants to school corporations and higher education institutions to perform the functions listed in this section.

95 Acts, ch 67, §20
Unnumbered paragraph 1 amended

256.38 School-to-work transition system.

1. It is the policy of the state of Iowa to provide an education system that prepares the students of this state to meet the high skills demands of today's workplace. The general assembly recognizes the need to prepare students for any postsecondary opportunity that leads to high-wage, high-skill careers. In order to meet this need, the high school curriculum must be redesigned so students appreciate the relevance of academic course work, reach higher levels of learning in science, math, and communications skills, and acquire the ability to apply this knowledge. Career pathways will modify high school curricula and instruction to provide students with opportunities to achieve high levels of skills and knowledge within a broad range of related career areas, which will require a variety of levels of preparation.

2. The departments of education, employment services, and economic development shall develop a statewide school-to-work transition system in consultation with local school districts, community colleges, and labor, business, and industry interests. The system shall be designed to attain the following objectives:

a. Motivate youths to stay in school and become productive citizens.

b. Set high standards by promoting higher academic performance levels.

c. Connect work and learning so that the classroom is linked to worksite learning and experience.

d. Ready students for work in order to improve their prospects for immediate employment after leaving school through career pathways that provide significant opportunity to continued education and career development.

e. Engage employers and workers by promoting their participation in the education of youth in order to ensure the development of a skilled, flexible, entry-level workforce.

f. Provide a framework to position the state to access federal resources for state youth apprenticeship systems and local programs.

95 Acts, ch 196, §1
NEW section

256.39 Career pathways program.

1. If the general assembly appropriates moneys for the establishment of a career pathways program, the department of education shall develop a career pathways grant program, criteria for the formation of ongoing career pathways consortia in each merged area, and guidelines and a process to be used in selecting career pathways consortium grant recipients, including a requirement that grant recipients shall provide matching funds or match grant funds with in-kind resources on a dollar-for-dollar basis. A portion of the moneys appropriated by the general assembly shall be made available to schools to pay for the issuance of employability skills assessments to public or nonpublic school students. An existing partnership or organization, including a regional school-to-work partnership, that meets the established criteria, may be considered a consortium for grant application purposes. One or more school districts may be considered a consortium for grant application purposes, provided the district can demonstrate the manner in which a community college, area education agency, representatives from business and labor organizations, and others as determined within the region will be involved. Existing school-to-work partnerships are encouraged to assist the local consortia in developing a plan and budget. The department shall provide assistance to consortia in planning and implementing career pathways program efforts.

2. To be eligible for a career pathways grant, a career pathways consortium shall develop a career pathways program that includes, but is not limited to, the following:

a. Measure the employability skills of students. Employability skills shall include, but are not limited to, reading for information, applied mathematics, listening, and writing.

b. Curricula designed to integrate academic and work-based learning to achieve high employability skills by all students related to career pathways. The curricula shall be designed through the cooperative efforts of secondary and postsecondary education professionals, business professionals, and community services professionals.

c. Staff development to implement the high-standard curriculum. These efforts may include team teaching techniques that utilize expertise from partnership businesses and postsecondary institutions.

3. In addition to the provisions of subsection 2, a career pathways program may include, but is not limited to, the following:

a. Career guidance and exploration for students.

b. Involvement and recognition of business, labor, and community organizations as partners in the career pathways program.

c. Provision for program accountability.

d. Encouragement of team teaching within the school or in partnership with postsecondary schools, and business, labor, community, and nonprofit organizations.

e. Service learning opportunities for students.

4. Business, labor, and community organizations are encouraged to market the career pathways program to the local community and provide students with mentors, shadow professionals, speakers, field trip sites, summer jobs, internships, and job offers for students who graduate with high performance records. Students are encouraged to volunteer their time to community organizations in exchange for workplace learning opportunities that do not displace current employees.

5. In developing career pathways program efforts, each consortium shall make every effort to cooperate with the juvenile courts, the department of economic development, the department of employment services, the department of human services, and the new Iowa schools development corporation.

6. The department of education shall direct and monitor the progress of each career pathways consortium in developing career pathways programs. By January 15, 1998, the department shall submit to the general assembly any findings and recommendations of the career pathways consortia, along with the department's recommendations for specific career pathways program efforts and for appropriate funding levels to implement and sustain the recommended programs.

7. Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30 of the fiscal year for which the funds were appropriated shall not revert but shall be available for expenditure for the following fiscal year for the purposes of this section.

8. A career pathways program is a comprehensive school transformation program under section 294A.14.

95 Acts, ch 196, §2
Appropriations; 95 Acts, ch 213, §3, 6; 95 Acts, ch 218, §1, 11, 33
NEW section

256.54 State library — medical and law libraries.

The state library includes, but is not limited to, a medical library, a law library, and the state data center.

1. The medical library shall be administered by a medical librarian, appointed by the director subject to chapter 19A, who shall do all of the following:

a. Operate the medical library which shall always be available for free use by the residents of Iowa under rules the commission adopts.

b. Give no preference to any school of medicine and shall secure books, periodicals, and pamphlets for every legally recognized school of medicine without discrimination.

c. Perform other duties imposed by law or prescribed by the rules of the commission.

2. The law library shall be administered by a law librarian appointed by the director subject to chapter 19A, who shall do all of the following:

a. Operate the law library which shall be maintained in the state capitol or in rooms convenient to the state supreme court and which shall be available

for free use by the residents of Iowa under rules the commission adopts.

b. Maintain, as an integral part of the law library, reports of various boards and agencies, copies of bills, journals, other information relating to current or proposed legislation, and copies of the Iowa administrative bulletin and Iowa administrative code and any publications incorporated by reference in the bulletin or code.

c. Arrange to make exchanges of all printed material published by the states and the government of the United States.

d. Perform other duties imposed by law or by the rules of the commission.

95 Acts, ch 14, §2

Subsection 2, paragraph b amended

CHAPTER 257

FINANCING SCHOOL PROGRAMS

257.1 State school foundation program — state aid.

1. *Program established.* A state school foundation program is established for the school year commencing July 1, 1991, and succeeding school years.

2. *State school foundation aid — foundation base.* For a budget year, each school district in the state is entitled to receive foundation aid, in an amount per pupil equal to the difference between the amount per pupil of foundation property tax in the district, and the combined foundation base per pupil or the combined district cost per pupil, whichever is less. However, if the amount of foundation aid received by a school district under this chapter is less than three hundred dollars per pupil, the district is entitled to receive three hundred dollars per pupil unless the receipt of three hundred dollars per pupil plus the per pupil amount raised by the foundation property tax exceeds the combined district cost per pupil of the district for the budget year. In that case, the district is entitled to receive an amount per pupil equal to the difference between the per pupil amount raised by the foundation property tax for the budget year and the combined district cost per pupil for the budget year.

For the budget year commencing July 1, 1991, and for each succeeding budget year the regular program foundation base per pupil is eighty-three percent of the regular program state cost per pupil, except that the regular program foundation base per pupil for the portion of weighted enrollment that is additional enrollment because of special education is seventy-nine percent of the regular program state cost per pupil. For the budget year commencing July 1, 1991, and for each succeeding budget year the special education support services foundation base is seventy-nine percent of the special education support services state cost per pupil. The combined foundation base is the sum of the regular program foundation base and

the special education support services foundation base.

For the budget year commencing July 1, 1995, the department of management shall add the amount of the additional budget adjustment computed in section 257.14, subsection 2, to the combined foundation base.

3. *Computations rounded.* In making computations and payments under this chapter, except in the case of computations relating to funding of special education support services, media services, and educational services provided through the area education agencies, the department of management shall round amounts to the nearest whole dollar.

95 Acts, ch 130, §1

Subsection 2, NEW unnumbered paragraph 3

257.3 Foundation property tax.

1. *Amount of tax.* Except as provided in subsections 2 and 3, a school district shall cause to be levied each year, for the school general fund, a foundation property tax equal to five dollars and forty cents per thousand dollars of assessed valuation on all taxable property in the district. The county auditor shall spread the foundation levy over all taxable property in the district.

The amount paid to each school district for the tax replacement claim for industrial machinery, equipment and computers under section 427B.19A shall be regarded as property tax. The portion of the payment which is foundation property tax shall be determined by applying the foundation property tax rate to the amount computed under section 427B.19, subsection 3, paragraph "a", as adjusted by paragraph "d", if any adjustment was made.

2. *Tax for reorganized and dissolved districts.* Notwithstanding subsection 1, a reorganized school district shall cause a foundation property tax of four dollars and forty cents per thousand dollars of

assessed valuation to be levied on all taxable property which, in the year preceding a reorganization, was within a school district affected by the reorganization as defined in section 275.1, or in the year preceding a dissolution was a part of a school district that dissolved if the dissolution proposal has been approved by the director of the department of education pursuant to section 275.55. In the year preceding the reorganization or dissolution, the school district affected by the reorganization or the school district that dissolved must have had a certified enrollment of fewer than six hundred in order for the four-dollar-and-forty-cent levy to apply. In succeeding school years, the foundation property tax levy on that portion shall be increased twenty cents per year until it reaches the rate of five dollars and forty cents per thousand dollars of assessed valuation.

For purposes of this section, a reorganized school district is one which absorbed at least thirty percent of the enrollment of the school district affected by a reorganization or dissolved during a dissolution and in which action to bring about a reorganization or dissolution was initiated by a vote of the board of directors or jointly by the affected boards of directors prior to November 30, 1990, and the reorganization or dissolution takes effect on or after July 1, 1991, and on or before July 1, 1993. Each district which initiated, by a vote of the board of directors or jointly by the affected boards, action to bring about a reorganization or dissolution by November 30, 1990, shall certify the date and the nature of the action taken to the department of education by September 1, 1991.

A reorganized school district which meets the requirements of this section for reduced property tax rates, but failed to vote on reorganization or dissolution prior to November 30, 1990, and failed to certify such action to the department of education by September 1, 1991, shall cause to be levied a foundation property tax of four dollars and sixty cents per thousand dollars of assessed valuation on all eligible taxable property pursuant to this section. In succeeding school years, the foundation property tax levy on that portion shall be increased twenty cents per year until it reaches the rate of five dollars and forty cents per thousand dollars of assessed valuation.

The reduced property tax rates of reorganized school districts that met the requirements of section 442.2, Code 1991, prior to July 1, 1991, shall continue to increase as provided in that section until they reach five dollars and forty cents.

3. *Subsequent reorganization.* If a reorganized school district, whose foundation property tax is reduced under subsection 2, reorganizes within five school years from the time of its original reorganization to which subsection 2 applies, the resulting reorganized school district shall cause to be levied a foundation property tax on the taxable property in that portion of the new reorganized district which, in the year preceding the latest reorganization, was within the original reorganized school district to which subsection 2 applies equal to one dollar per

thousand dollars of assessed value less than the rate the original reorganized district would have levied under subsection 2 for the same school year if there had been no new reorganization. In succeeding school years, the foundation property tax on that portion of the new reorganized school district shall be increased by forty cents for the first succeeding year and by twenty cents per year thereafter until it reaches the rate of five dollars and forty cents per thousand dollars of assessed valuation.

4. *Railway corporations.* For purposes of section 257.1, the "amount per pupil of foundation property tax" does not include the tax levied under subsection 1, 2, or 3 on the property of a railway corporation, or on its trustee if the corporation has been declared bankrupt or is in bankruptcy proceedings.

95 Acts, ch 206, §34

Subsection 1, NEW unnumbered paragraph 2

257.8 State percent of growth — allowable growth.

1. *State percent of growth.* The state percent of growth for the budget year beginning July 1, 1996, is three and three-tenths percent. The state percent of growth for each subsequent budget year shall be established by statute which shall be enacted within thirty days of the submission in the year preceding the base year of the governor's budget under section 8.21. The establishment of the state percent of growth for a budget year shall be the only subject matter of the bill which enacts the state percent of growth for a budget year.

2. *Allowable growth calculation.* The department of management shall calculate the regular program allowable growth for a budget year by multiplying the state percent of growth for the budget year by the regular program state cost per pupil for the base year and shall calculate the special education support services allowable growth for the budget year by multiplying the state percent of growth for the budget year by the special education support services state cost per pupil for the base year.

3. *Combined allowable growth.* The combined allowable growth per pupil for each school district is the sum of the regular program allowable growth per pupil and the special education support services allowable growth per pupil for the budget year, which may be modified as follows:

a. By the school budget review committee under section 257.31.

b. By the department of management under section 257.36.

95 Acts, ch 11, §1

State percent of growth established at three and one-half percent for budget year beginning July 1, 1995; 95 Acts, ch 9

1995 amendments to subsection 1 are effective January 1, 1996, for school budget years beginning after that date; 95 Acts, ch 11, §3

Subsection 1 amended

257.11 Supplementary weighting plan.

In order to provide additional funds for school districts which send their resident pupils to another school district or to a community college for classes, which jointly employ and share the services of teach-

ers under section 280.15, which use the services of a teacher employed by another school district, or which jointly employ and share the services of a school superintendent under section 280.15 or 273.7A, a supplementary weighting plan for determining enrollment is adopted as follows:

1. *Regular curriculum.* Pupils in a regular curriculum attending all their classes in the district in which they reside, taught by teachers employed by that district, and having administrators employed by that district, are assigned a weighting of one.

2. *Shared classes or teachers.* If the school budget review committee certifies to the department of management that the shared classes or teachers would otherwise not be implemented without the assignment of additional weighting, pupils attending classes in another school district or a community college, attending classes taught by a teacher who is employed jointly under section 280.15, or attending classes taught by a teacher who is employed by another school district, are assigned a weighting of one plus an additional portion equal to one times the percent of the pupil's school day during which the pupil attends classes in another district or community college, attends classes taught by a teacher who is jointly employed under section 280.15, or attends classes taught by a teacher who is employed by another school district. A pupil attending a class in which students from one or more other school districts are enrolled and the class is taught via the Iowa communications network is not deemed to be attending a class in another school district for the purposes of this subsection and the school district is not eligible for additional weighting for that class under this subsection.

School districts that have executed whole grade sharing agreements under section 282.10 through 282.12 beginning with the budget year beginning on July 1, 1993, and that received supplementary weighting for shared teachers or classes under this subsection for the school year ending prior to the effective date of the whole grade sharing agreement shall include in its supplementary weighting amount additional pupils added by the application of the supplementary weighting plan, equal to the pupils added by the application of the supplementary weighting plan pursuant to this subsection in the budget year beginning July 1, 1992. If at any time after July 1, 1993, a district ends a whole grade sharing agreement with the original district and does not enter into a whole grade sharing agreement with an alternative district, the school district shall reduce its supplementary weighting amount by the number of pupils added by the application of the supplementary weighting in this subsection in the budget year beginning July 1, 1992, in the budget year that the whole grade sharing agreement is terminated.

3. *Whole grade sharing.* For the budget years beginning July 1, 1991, and July 1, 1992, in districts that have executed whole grade sharing agreements under sections 282.10 through 282.12, the school budget review committee shall assign a weighting

equal to one plus an additional portion of one times the percent of the pupil's school day in which a pupil attends classes in another district or a community college, attends classes taught by a teacher who is employed jointly under section 280.15, or attends classes taught by a teacher who is employed by another district. The assignment of additional weighting to a school district shall continue for a period of five years. If the school district reorganizes during that five-year period, the assignment of the additional weighting shall be transferred to the reorganized district until the expiration of the five-year period. If a school district was receiving additional weighting for whole grade sharing under section 442.39, subsection 2, Code 1989, the district shall continue to be assigned additional weighting for whole grade sharing by the school budget review committee under this subsection so that the district is assigned the additional weighting for whole grade sharing for a total period of five years.

4. *Pupils ineligible.* A pupil eligible for the weighting plan provided in section 256B.9 is not eligible for the weighting plan provided in this section.

5. *Shared superintendents.* For the budget years beginning July 1, 1991, and July 1, 1992, pupils enrolled in a school district in which the superintendent is employed jointly under section 280.15 or under section 273.7A, are assigned a weighting of one plus an additional portion of one for the superintendent who is jointly employed times the percent of the superintendent's time in which the superintendent is employed in the school district. However, the total additional weighting assigned under this subsection for a budget year for a school district shall not exceed seven and one-half and the total additional weighting added cumulatively to the enrollment of school districts sharing a superintendent shall not exceed twelve and one-half. The assignment of additional weighting to a school district shall continue for a period of five years. If the school district reorganizes during that five-year period, the assignment of the additional weighting shall be transferred to the reorganized district until the expiration of the five-year period.

If a district was receiving additional weighting for superintendent sharing or administrator sharing under section 442.39, subsection 4, Code 1989, the district shall continue to be assigned additional weighting for superintendent sharing or administrator sharing by the school budget review committee under this subsection so that the district is assigned the additional weighting for sharing for a total period of five years.

For purposes of this section, "superintendent" includes a person jointly employed under section 273.7A or section 280.15 to serve in the capacity of a school superintendent and who holds a superintendent's endorsement issued under chapter 272 by the board of educational examiners.

6. *Shared mathematics, science, and language courses.* For the budget years beginning July 1, 1991, and July 1, 1992, a school district receiving

additional funds under subsection 2 or 3 for its pupils at the ninth grade level and above that are enrolled in sequential mathematics courses at the advanced algebra level and above; chemistry, advanced chemistry, physics or advanced physics courses; or foreign language courses at the second year level and above shall have an additional weighting of one pupil added to its total.

7. *Calculation of weights.* The school budget review committee shall calculate the weights to be used under subsections 2 and 3 to the nearest one-hundredth of one and under subsection 5 to the next highest one-thousandth of one. To the extent possible, the moneys generated by the weighting shall be equivalent to the moneys generated by the one-tenth, five-tenths, and twenty-five thousandths weighting provided in section 442.39, Code 1989.

95 Acts, ch 111, §1; 95 Acts, ch 209, §13
 Subsection 5, unnumbered paragraph 3, is retroactive to July 1, 1994; 95 Acts, ch 111, §2
 Subsection 2, unnumbered paragraph 1 amended
 Subsection 5, NEW unnumbered paragraph 3

257.14 Budget adjustment.

1. For the budget years commencing July 1, 1991, July 1, 1992, July 1, 1993, July 1, 1994, July 1, 1995, and July 1, 1996, if the department of management determines that the regular program district cost of a school district for a budget year is less than the total of the regular program district cost plus any adjustment added under this section for the base year for that school district, the department of management shall provide a budget adjustment for that district for that budget year that is equal to the difference.

2. For the budget year beginning July 1, 1995, if the department of management determines that the regular program district cost plus the budget adjustment computed under subsection 1 of a school district is less than one hundred one percent of the total of the regular program district cost plus any adjustment added under this section for the base year for that school district, the department of management shall provide an additional budget adjustment for that budget year that is equal to the difference.

3. For the budget year beginning July 1, 1991, for a school district, the department of management shall use as the district's base year regular program district cost the product of the district's regular program district cost per pupil calculated as regular program district cost per pupil would have been calculated for the budget year under section 442.9, Code 1989, multiplied by the district's budget enrollment as budget enrollment would have been calculated under section 442.4, Code 1989, for the budget year, and shall add to that amount the amount added to district cost pursuant to section 442.21, Code 1989.

95 Acts, ch 130, §2
 Former unnumbered paragraph 1 amended and numbered as subsections 1 and 2
 Former unnumbered paragraph 2 editorially renumbered as subsection 3

257.16 Appropriations.

There is appropriated each year from the general fund of the state an amount necessary to pay the

foundation aid and supplementary aid under section 257.4, subsection 2.

All state aids paid under this chapter, unless otherwise stated, shall be paid in monthly installments beginning on September 15 of a budget year and ending on or about June 15 of the budget year as determined by the department of management, taking into consideration the relative budget and cash position of the state resources.

All moneys received by a school district from the state under this chapter shall be deposited in the general fund of the school district, and may be used for any school general fund purpose.

94 Acts, ch 1181, §12, 18; 95 Acts, ch 214, §10, 11
 1994 amendment to unnumbered paragraph 2 in 94 Acts, ch 1181, §12, is effective July 1, 1995; 94 Acts, ch 1181, §18; 95 Acts, ch 214, §10, 11
 See Code editor's note
 Unnumbered paragraph 2 amended

257.18 Instructional support program.

1. An instructional support program that provides additional funding for school districts is established. A board of directors that wishes to consider participating in the instructional support program shall hold a public hearing on the question of participation. The board shall set forth its proposal, including the method that will be used to fund the program, in a resolution and shall publish the notice of the time and place of a public hearing on the resolution. Notice of the time and place of the public hearing shall be published in one or more newspapers not less than ten nor more than twenty days before the public hearing. For the purpose of establishing and giving assured circulation to the proceedings, only a newspaper which is a newspaper of general circulation issued at a regular frequency, distributed in the school district's area, and regularly delivered or mailed through the post office during the preceding two years may be used for the publication. In addition, the newspaper must have a list of subscribers who have paid, or promised to pay, at more than a nominal rate, for copies to be received during a stated period. At the hearing, the board shall announce a date certain, no later than thirty days after the date of the hearing, that it will take action to adopt a resolution to participate in the instructional support program for a period not exceeding five years or to direct the county commissioner of elections to call an election to submit the question of participation in the program for a period not exceeding ten years to the registered voters of the school district at the next following regular school election in the base year or a special election held not later than December 1 of the base year. If the board calls an election on the question of participation, if a majority of those voting on the question favors participation in the program, the board shall adopt a resolution to participate and certify the results of the election to the department of management.

2. If the board does not provide for an election and adopts a resolution to participate in the instructional support program, the district shall participate in the instructional support program unless within twenty-

eight days following the action of the board, the secretary of the board receives a petition containing the required number of signatures, asking that an election be called to approve or disapprove the action of the board in adopting the instructional support program. The petition must be signed by eligible electors equal in number to not less than one hundred or thirty percent of the number of voters at the last preceding regular school election, whichever is greater. The board shall either rescind its action or direct the county commissioner of elections to submit the question to the registered voters of the school district at the next following regular school election or a special election held not later than December 1 of the base year. If a majority of those voting on the question at the election favors disapproval of the action of the board, the district shall not participate in the instructional support program. If a majority of those voting on the question favors approval of the action, the board shall certify the results of the election to the department of management and the district shall participate in the program.

At the expiration of the twenty-eight day period, if no petition is filed, the board shall certify its action to the department of management and the district shall participate in the program.

3. Participation in an instructional support program is not affected by a change in the boundaries of the school district, except as otherwise provided in this section. If each school district involved in a school reorganization under chapter 275 has approved an instructional support program, and if the voters have not voted upon the question of participation in the program in the reorganized district, the instructional support program shall be in effect for the reorganized district that has been approved for the least amount and the shortest time in any of the districts.

95 Acts, ch 67, §53
Terminology change applied

257.29 Educational improvement program.

An educational improvement program is established to provide additional funding for school districts in which the regular program district cost per pupil for a budget year is one hundred ten percent of the regular program state cost per pupil for the budget year and which have approved the use of the instructional support program established in section 257.18. A board of directors that wishes to consider participating in the educational improvement program shall hold a hearing on the question of participation and the maximum percent of the regular program district cost of the district that will be used. The hearing shall be held in the manner provided in section 257.18 for the instructional support program. Following the hearing, the board may direct the county commissioner of elections to submit the question to the registered voters of the school district at the next following regular school election or a special election held not later than the following February 1. If a majority of those voting on the question favors participation in the program, the board shall adopt a

resolution to participate and shall certify the results of the election to the department of management and the district shall participate in the program. If a majority of those voting on the question does not favor participation, the district shall not participate in the program.

The educational improvement program shall provide additional revenues each fiscal year equal to a specified percent of the regular program district cost of the district, as determined by the board but not more than the maximum percent authorized by the electors if an election has been held. Certification of a district's participation for a budget year, the method of funding, and the amount to be raised shall be made to the department of management not later than April 15 of the base year.

The educational improvement program shall be funded by either an educational improvement property tax or by a combination of an educational improvement property tax and an educational improvement income surtax. The method of raising the educational improvement moneys shall be determined by the board. Subject to the limitation in section 298.14, if the board uses a combination of an educational improvement property tax and an educational improvement income surtax, the board shall determine the percent of income surtax to be imposed, expressed as full percentage points, not to exceed twenty percent.

The department of management shall establish the amount of the educational improvement property tax to be levied or the amount of the combination of the educational improvement property tax to be levied and the amount of the school district income surtax to be imposed for each school year that the educational improvement amount is authorized. The educational improvement property tax and income surtax, if an income surtax is imposed, shall be levied and imposed, collected, and paid to the school district in the manner provided for the instructional support program in sections 257.21 through 257.26. Moneys received by a school district under the educational improvement program are miscellaneous income.

Once approved at an election, the authority of the board to use the educational improvement program shall continue until the board votes to rescind the educational improvement program or the voters of the school district by majority vote order the discontinuance of the program. The board shall call an election to vote on the proposition whether to discontinue the program upon the receipt of a petition signed by not less than one hundred eligible electors or thirty percent of the number of electors voting at the last preceding school election, whichever is greater.

Participation in an educational improvement program is not affected by a change in the boundaries of the school district, except as otherwise provided in this section. If each school district involved in school reorganization under chapter 275 has approved an educational improvement program, and if the voters have not voted upon the question of participation in the program in the reorganized district, the educa-

tional improvement program shall be in effect for the reorganized district that has been approved for the least amount and the shortest time in any of the districts.

Notwithstanding the requirement in the first unnumbered paragraph of this section that the regular program district cost per pupil for a budget year is one hundred ten percent of the regular state cost per pupil, the board of directors may participate in the educational improvement program as provided in this section if the school district had adopted an

enrichment levy of fifteen percent of the state cost per pupil multiplied by the budget enrollment in the district prior to July 1, 1992, and upon expiration of the period for which the enrichment levy was adopted, adopts a resolution for the use of the instructional support program established in section 257.18. The maximum percent of the regular district cost of the district that may be used under this paragraph shall not exceed five percent.

95 Acts, ch 67, §53
Terminology change applied

CHAPTER 257B

SCHOOL FUNDS

257B.1 Permanent fund.

The permanent school fund, the interest of which only can be appropriated for school purposes, shall consist of:

1. Five percent of the net proceeds of the public lands of the state.

2. The proceeds of the sale of the five hundred thousand acres of land granted the state under the eighth section of an Act of Congress passed September 4, 1841, entitled: "An Act to appropriate the proceeds of all sales of public lands, and to grant pre-emption rights".

3. The proceeds of all intestate estates escheated to the state.

4. The proceeds of the sales of the sixteenth section in each township, or lands selected in lieu thereof.

5. All other moneys by law credited to the permanent school fund.

95 Acts, ch 218, §16

Former subsection 5 stricken and former subsection 6 renumbered as 5

257B.1A Interest for Iowa schools fund — transfer of interest.

1. The interest for Iowa schools fund is established in the office of treasurer of state. The department of revenue and finance shall deposit interest earned on the permanent school fund in the interest for Iowa schools fund. Moneys in the interest for Iowa schools fund shall be transferred or allocated only for school purposes as provided in this section.

2. For a transfer of moneys from the interest for Iowa schools fund to the first in the nation in education foundation, prior to July 1, October 1, January 1, and March 1 of each year, the governing board of the first in the nation in education foundation established in section 257A.2 shall certify to the treasurer

of state the cumulative total value of contributions received under section 257A.7 for deposit in the first in the nation in education fund and for the use of the foundation. The cumulative total value of contributions received includes the value of the amount deposited in the national center endowment fund established in section 263.8A in excess of eight hundred seventy-five thousand dollars. The value of in-kind contributions shall be based upon the fair market value of the contribution determined for income tax purposes.

The portion of the interest for Iowa schools fund that is equal to the cumulative total value of contributions, less the portion of the interest for Iowa schools fund dedicated to the national center for gifted and talented education, is dedicated to the first in the nation in education foundation for that year. The interest earned on this dedicated amount shall be transferred by the treasurer of state to the credit of the first in the nation in education foundation.

3. For a transfer of moneys from the interest for Iowa schools fund to the national center endowment fund established in section 263.8A; prior to July 1, October 1, January 1, and March 1 of each year, the state university of Iowa shall certify to the treasurer of state the cumulative total value of contributions received and deposited in the national center endowment fund. Within fifteen days following certification by the state university of Iowa, the treasurer of state shall transfer from the interest for Iowa schools fund to the national center an amount equal to one-half the cumulative total value of the contributions deposited in the national center endowment fund, not to exceed eight hundred seventy-five thousand dollars.

95 Acts, ch 218, §17

Section stricken and rewritten

CHAPTER 258

VOCATIONAL EDUCATION

258.18 School-to-work transition system.

Repealed by 95 Acts, ch 196, § 3. See § 256.38.

CHAPTER 260C

COMMUNITY COLLEGES

260C.24 Payment of appropriations.

Payment of appropriations for distribution under this chapter, or of appropriations made in lieu of such appropriations, shall be made by the department of revenue and finance in monthly installments due on or about the fifteenth of each month of a budget year, and installments shall be as nearly equal as possible, as determined by the department of revenue and finance, taking into consideration the relative budget and cash position of the state resources.

95 Acts, ch 218, §18
NEW section

260C.29 Career opportunity program — mission.

1. The mission of the career opportunity program established in this section is to encourage collaborative efforts by a community college, the institutions under the control of the state board of regents, and business and industry to enhance the educational opportunities and provide for job creation and career advancement for Iowa's minority persons by providing assistance to minority persons who major in fields or subject areas where minorities are currently underrepresented or underutilized.

2. A career opportunity program is established to be administered by the community college located in a county with a population in excess of three hundred thousand. The community college shall provide office space for the efficient operation of the program. The community college shall employ a director for the program. The director of the program shall employ necessary support staff. The director and staff shall be employees of the community college.

3. The director of the program shall do the following:

a. Direct the coordination of the program between the community college and the institutions of

higher education under the control of the state board of regents.

b. Propose rules to the state board of education as necessary to implement the program.

c. Recruit minority persons into the program.

d. Enlist the assistance and cooperation of leaders from business and industry to provide job placement services for students who are successfully completing the program.

e. Prepare and submit an annual report to the governor and the general assembly by January 15.

4. To be eligible for the program, a minority person shall be a resident of Iowa who is accepted for admission at or attends a community college or an institution of higher education under the control of the state board of regents. In addition, the person shall major in or achieve credit toward an associate degree, a bachelor's degree, or a master's degree in a field or subject area where minorities are underrepresented or underutilized.

5. The amount of assistance provided to a student under this section shall not exceed the cost of tuition, fees, and books required for the program in which the student is enrolled and attends. As used in this section, "books" may include book substitutes, including reusable workbooks, loose-leaf or bound manuals, and computer software materials used as book substitutes. A student who meets the qualifications of this section shall receive assistance under this section for not more than the equivalent of two full years of study.

6. For purposes of this section, "minority person" means a person who is Black, Hispanic, Asian, or a Pacific Islander, American Indian, or an Alaskan Native American.

95 Acts, ch 218, §19
NEW section

260C.30 Reserved.

CHAPTER 260D

FUNDING FOR COMMUNITY COLLEGES

Appropriations; restrictions; 95 Acts, ch 201, §2, 3; 95 Acts, ch 218, §1, 2, 33

260D.12 Payment of appropriation.

Payment of appropriations for distribution under this chapter, or of appropriations made in lieu of such appropriations, shall be made by the department of revenue and finance in monthly installments due on or about the fifteenth day of each month of a budget year, and installments shall be as nearly equal as possible, as determined by the department of revenue and finance, taking into consideration the relative budget and cash position of the state resources.

94 Acts, ch 1181, §13, 18; 95 Acts, ch 214, §9-11

1994 amendments, as amended by the 1995 amendments, are effective July 1, 1995; 94 Acts, ch 1181, §18; 95 Acts, ch 214, §10, 11
Section amended

260D.14A Community college excellence 2000 account.

The department of education shall provide for the establishment of a community college excellence 2000 account in the office of the treasurer of state for deposit of moneys appropriated to the account for purposes of funding quality instructional centers and

program and administrative sharing agreements under sections 260C.45 and 260C.46. There is appropriated from the general fund of the state to the department of education for the fiscal year beginning July 1, 1997, an amount equal to two and five-tenths percent of the total state general aid generated for all community colleges during the budget year under this chapter for deposit in the community college excellence 2000 account. In the next succeeding two fiscal years, the percent multiplier shall be increased in equal increments until the multiplier reaches seven and one-half percent of the total state general aid generated for all community colleges during the budget year.

Of the moneys in the community college excellence 2000 account, fifty percent shall be reserved for purposes of awarding funds to approved quality instructional centers, forty percent shall be reserved for purposes of awarding funds to community colleges for approved program sharing agreements, and ten percent shall be reserved for purposes of awarding funds to community colleges for approved administrative sharing agreements. Notwithstanding the reserva-

tion of moneys in the account, funds not awarded under this section may be used for purposes of allocating funds to community colleges for approved mergers under section 260C.39. Funds received under section 260C.39 and this section shall be in lieu of receipt of funds for other programs funded under this section.

The department of education shall notify the department of management of approval of claims against the account under sections 260C.45, 260C.46, and this section and the department of revenue and finance shall make the payments to community colleges.

Unencumbered funds remaining in the account at the end of a fiscal year shall revert to the general fund of the state under section 8.33.

It is the intent of the general assembly that the general assembly enact legislation by July 1, 1997, that will increase the maximum percent multiplier established in this section from seven and five-tenths percent to ten percent.

95 Acts, ch 218, §20

Unnumbered paragraphs 1 and 5 amended

CHAPTER 260E

INDUSTRIAL NEW JOBS TRAINING

260E.3 Agreement.

1. A community college may enter into an agreement to establish a project. If an agreement is entered into, the community college and the employer shall notify the department of revenue and finance as soon as possible. An agreement shall provide for program costs, including deferred costs, which may be paid from one or a combination of the following sources:

a. Incremental property taxes to be received or derived from an employer's business property where new jobs are created as a result of the project.

b. New jobs credit from withholding to be received or derived from new employment resulting from the project.

c. Tuition, student fees, or special charges fixed by the board of directors to defray program costs in whole or in part.

d. Guarantee of payments to be received under paragraph "a," "b," or "c".

2. Payment of program costs shall not be deferred for a period longer than ten years from the date of commencement of the project.

3. Costs of on-the-job training for employees shall not exceed fifty percent of the annual gross payroll

costs for up to one year of the new jobs. For purposes of this subsection, "gross payroll" can be the gross wages, salaries, and benefits for the jobs in training in the project.

4. An agreement shall include a provision which fixes the minimum amount of incremental property taxes, new jobs credit from withholding, or tuition and fee payments which shall be paid for program costs.

5. Any payments required to be made by an employer are a lien upon the employer's business property until paid and have equal precedence with ordinary taxes and shall not be divested by a judicial sale. Property subject to the lien may be sold for sums due and delinquent at a tax sale, with the same forfeitures, penalties, and consequences as for the nonpayment of ordinary taxes. The purchaser at tax sale obtains the property subject to the remaining payments.

95 Acts, ch 195, §11, 44; 95 Acts, ch 201, §1, 3

Reduction of 1995 appropriations to merged area if agreement includes services for employees of confinement feeding operations; 95 Acts, ch 201, §2, 3

Section not amended; footnote added

Amendment which added new subsection 6 was stricken effective June 1, 1995

CHAPTER 260F

SMALL BUSINESS NEW JOBS TRAINING

Reduction of 1995 appropriations to merged area if agreement under this chapter includes services for employees of confinement feeding operations; 95 Acts, ch 201, §2

260F.6 Job training fund.

1. There is established for the community colleges a job training fund in the department of economic development in the workforce development fund. The job training fund consists of moneys appropriated for the purposes of this chapter plus the interest and principal from repayment of advances made to businesses for program costs, plus the repayments, including interest, of loans made from that retraining fund, and interest earned from moneys in the job training fund.

2. To provide funds for the present payment of the costs of a training program by the business, the community college may provide to the business an advance of the moneys to be used to pay for the program costs as provided in the agreement. To receive the funds for this advance from the job training

fund established in subsection 1, the community college shall submit an application to the department of economic development. The amount of the advance shall not exceed fifty thousand dollars for any project. The advance, if the agreement provides it as a loan, shall be repaid with interest from the sources provided in the agreement. The rate of interest to be charged for advances made in a calendar month is equal to one-half of the average rate of interest on tax exempt certificates issued by community colleges pursuant to chapter 260E for the previous twelve months. The rate shall be computed by the department of economic development.

95 Acts, ch 184, §8
1995 amendment to subsection 1 stricken effective June 30, 1997; instructions to Code editor; 95 Acts, ch 184, §12
Subsection 1 amended

CHAPTER 261

COLLEGE STUDENT AID COMMISSION

261.2 Duties of commission — federal cooperation.

The commission shall:

1. Prepare and administer a state plan for higher education facilities which shall be the state plan submitted to the secretary of education, in connection with the participation of this state in programs authorized by the federal "*Higher Education Facilities Act of 1963*" (Pub. L. No. 88-204), [77 Stat. L. 363; 20 U.S.C. 701] together with any amendments thereto.

2. Provide for administrative hearings to every applicant for funds authorized under the "*Higher Education Facilities Act of 1963*" (Pub. L. No. 88-204), [77 Stat. L. 363; 20 U.S.C. 701] together with any amendments thereto, in regard to the priority assigned to such application for funds by said commission or to any other determination of the state commission adversely affecting the applicant.

3. Apply for, receive, administer, expend, and account for such federal moneys necessary for its own administrative expenses as authorized by the federal "*Higher Education Facilities Act of 1963*" (Pub. L. No. 88-204), [77 Stat. L. 363; 20 U.S.C. 701] together with any amendments thereto.

4. Prepare and administer a state plan for a state supported and administered scholarship program. The state plan shall provide for scholarships to deserving students of Iowa, matriculating in Iowa universities, colleges, community colleges, or schools of

professional nursing. Eligibility of a student for receipt of a scholarship shall be based upon academic achievement and completion of advanced level courses prescribed by the commission.

5. Receive, administer, and allot a tuition loan fund for the benefit of Iowa resident students enrolled in Iowa studying to be physicians or osteopathic physicians and surgeons and who agree to become general practitioners (family doctors) and practice in Iowa.

Said fund shall be allotted to students for not more than three years of study and shall be in the nature of a loan. Such loan shall have as one of its terms that fifty percent thereof shall be canceled at the end of five years of the general practice in Iowa with an additional ten percent to be canceled each year thereafter until the entire loan may be canceled. No interest shall be charged on any part of the loan thus canceled. Additional terms and conditions of said loan shall be established by the college student aid commission so as to facilitate the purpose of this section.

Chapter 8 shall apply to this subsection except that section 8.5 shall not apply.

6. Administer the tuition grant program under this chapter.

7. Prepare a state plan, complete with fiscal implications, for a state matching program to match federal funds paid under the GI Bill Improvement Act of 1977, Pub. L. No. 95-202, to a veteran who is

an Iowa resident for the purpose of repaying any school loans received by such veteran from the United States veterans administration.

8. Prepare and administer the Iowa science and mathematics loan program under this chapter.

9. Administer the supplemental grant program under this chapter.

10. Review reports filed by accredited private institutions under section 261.9, subsection 1, to determine compliance.

11. Develop and implement, in cooperation with the state board of regents, an educational program and marketing strategies designed to inform parents about the options available for financing a college education and the need to accumulate the financial resources necessary to pay for a college education. The educational program shall include, but not be limited to, distribution of informational material to public and nonpublic elementary schools for distribution to parents and guardians of five-year and six-year old children.

12. Approve transfers from the scholarship and tuition grant reserve fund under section 261.20.

13. Develop and implement, in cooperation with the judicial district departments of correctional services and the department of corrections, a program to assist criminal offenders in applying for federal and state aid available for higher education.

14. Develop and implement, in cooperation with the department of human services and the judicial department, a program to assist juveniles who are sixteen years of age or older and who have a case permanency plan under chapter 232 or 237 or are otherwise under the jurisdiction of chapter 232 in applying for federal and state aid available for higher education.

95 Acts, ch 70, §1

Subsection 10 stricken and former subsections 11–13 renumbered as 10–12

Subsection 14 stricken and former subsections 15 and 16 renumbered as 13 and 14

261.5 Displaced workers financial aid program. Repealed by 95 Acts, ch 170, § 3.

261.12 Amount of grant.

1. The amount of a tuition grant to a qualified full-time student for the fall and spring semesters, or the trimester equivalent, shall be the amount of the student's financial need for that period. However, a tuition grant shall not exceed the lesser of:

a. The total tuition and mandatory fees for that student for two semesters or the trimester or quarter equivalent, less the base amount determined annually by the college student aid commission, which base amount shall be within ten dollars of the average tuition for two semesters or the trimester equivalent of undergraduate study at the state universities under the board of regents, but in any event the base amount shall not be less than four hundred dollars; or

b. For the fiscal year beginning July 1, 1995, and for each following fiscal year, two thousand nine hundred dollars.

2. The amount of a tuition grant to a qualified part-time student enrolled in a course of study including at least three semester hours but fewer than twelve semester hours for the fall and spring semesters, or the trimester or quarter equivalent, shall be equal to the amount of a tuition grant that would be paid to a full-time student times a number which represents the number of hours in which the part-time student is actually enrolled divided by twelve semester hours, or the trimester or quarter equivalent.

95 Acts, ch 218, §21

Subsection 1, paragraph b amended

261.17A Iowa hope loan program.

1. An Iowa hope loan may be awarded to a resident of Iowa who is admitted and in attendance as a student in a single, twelve-month or less, vocational-technical or career option program in a community college in the state, who meets the eligibility requirements for a Pell grant, and who is working toward certification, a diploma, or a degree in a skilled occupation. In addition, an eligible applicant shall have obtained the bona fide intent of a company operating in Iowa to employ the applicant upon the applicant's attainment of a certificate, diploma, or degree, or shall be currently employed by a company operating in Iowa that has expressed a bona fide intent to advance the employee in employment upon the employee's attainment of a certificate, diploma, or degree.

2. A student who meets the qualifications of subsection 1 may receive an Iowa hope loan for not more than twelve months. A student shall not receive assistance for courses for which credit was previously received.

3. The amount of an Iowa hope loan shall not exceed the cost of tuition for the community college program in which the student is enrolled and attends. If a student receives financial aid under any other program, the full amount of that financial aid shall be considered part of the student's financial resources available in determining the amount of the Iowa hope loan.

4. Payments under the loan shall be allocated equally among the semesters or quarters of the year upon certification by the community college that the student is in attendance in a vocational-technical or career option program, as defined under rules of the department of education. If the student discontinues attendance before the end of any term after the community college receives payment from the loan, the entire amount of any refund due that student, up to the amount of any payments made to the community college from the loan, shall be paid by the community college to the state.

5. The commission shall administer this program and shall do all of the following:

a. Provide application forms for distribution to students by Iowa high schools and community colleges.

b. Adopt rules for determining financial need, requiring that no interest be charged for an Iowa

hope loan, defining residence for the purposes of this section, processing and approving applications for grants, determining priority for loans, and establishing procedures for the repayment of the loan. The repayment schedule shall commence not less than six months after the loan recipient successfully completes the program and is awarded a certificate, a diploma, or a degree in a skilled occupation. The repayment schedule may be suspended if the loan recipient is a full-time student in an accredited post-secondary institution.

c. Approve and award loans on an annual basis. A student approved for a loan under the program shall enter into a payment agreement with the commission before receiving a loan under the program.

d. Make an annual report to the governor and general assembly.

6. Each applicant, in accordance with the rules established by the commission, shall do all of the following:

a. Complete and file an application for an Iowa hope loan.

b. Be responsible for the submission of the financial information provided for evaluation of the applicant's need for a loan, on forms provided by the commission.

c. Report promptly to the commission any necessary information requested by the commission.

7. An Iowa hope loan revolving fund is created in the state treasury as a separate fund under the control of the commission. All moneys deposited or paid into the fund are appropriated and made available to the college student aid commission to be used for loans as provided in this section. The commission shall deposit payments made by Iowa hope loan recipients into the Iowa hope loan fund. Notwithstanding section 8.33, any balance in the fund on June 30 of each fiscal year shall not revert to the general fund of the state, but shall be available for the purposes of this section in subsequent fiscal years.

8. Loans awarded under this section are subject to the limitations of any appropriations made by the general assembly and of the moneys in the revolving fund. The amount of a loan awarded to an eligible student shall not be less than five hundred dollars and shall not exceed one thousand dollars. However, if full tuition is less than five hundred dollars, the amount of the loan shall be for not more than an amount equal to the full tuition.

95 Acts, ch 197, §1
NEW section

261.25 Appropriations — standing limited — minority student and faculty information.

1. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of thirty-five million six hundred sixty-four thousand seven hundred fifty dollars for tuition grants.

2. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of four hundred seventy-four thousand eight hundred dollars for scholarships.

3. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of one million four hundred twenty-four thousand seven hundred eighty dollars for vocational-technical tuition grants.

4. This section shall not be construed to be a limitation on any of the amounts which may be appropriated by the general assembly for any program enumerated in this section.

5. For the fiscal year beginning July 1, 1989, and in succeeding years, the institutions of higher education that enroll recipients of Iowa tuition grants shall transmit to the Iowa college student aid commission information about the numbers of minority students enrolled and minority faculty members employed at the institution, and existing or proposed plans for the recruitment and retention of minority students and faculty as well as existing or proposed plans to serve nontraditional students. The Iowa college student aid commission shall compile and report the enrollment and employment information and plans to the chairpersons and ranking members of the house and senate education committees, members of the joint education appropriations subcommittee, the governor, and the legislative fiscal bureau by December 15 of each year.

95 Acts, ch 218, §22
Subsection 1 amended

261.26 Optometry schools. Repealed by 95 Acts, ch 70, § 3.

261.27 Contract for right to enter school. Repealed by 95 Acts, ch 70, § 3.

261.46 Occupational therapist loan payments. Repealed by 95 Acts, ch 70, § 3.

261.47 Nursing loan payments. Repealed by 95 Acts, ch 70, § 3.

261.49 National guard loan payments. Repealed by 95 Acts, ch 70, § 3.

261.50 Physician loan payments. Repealed by 95 Acts, ch 70, § 3.

CHIROPRACTIC GRADUATE STUDENT FORGIVABLE LOAN PROGRAM

261.71 Chiropractic graduate student forgivable loans.

1. A chiropractic graduate student forgivable loan program is established, to be administered by the college student aid commission for resident graduate students who are enrolled at Iowa chiropractic colleges and universities. A resident graduate student attending an Iowa chiropractic college or university is eligible for loan forgiveness under the program if the student meets all of the following conditions:

a. The student graduates from an Iowa chiropractic college or university that meets the requirements for approval under section 151.4.

b. The student has completed a chiropractic residency program.

c. The student practices in the state of Iowa.

d. The student has made application for, using the procedures specified in section 261.16, and received moneys through the college student aid commission from the funds allocated for loans under this section.

2. Of the moneys loaned to an eligible student, for each year of up to and including four years of practice in Iowa, the amount of one thousand one hundred dollars shall be forgiven. If a student fails to complete a year of practice in the state, the loan amount for that year shall not be forgiven. Forgivable loans made to eligible students shall not become due, for repayment purposes, until after the student has completed the student's residency.

3. For purposes of this section "graduate student" means a student who has completed at least ninety semester hours, or the trimester or quarter equivalent, of postsecondary course work at a public higher education institution or at an accredited private institution, as defined under section 261.9. The college student aid commission shall adopt rules, consistent with rules used for students enrolled in higher education institutions under the control of the state board of regents, for purposes of determining Iowa residency status of graduate students under this section. The commission shall also adopt rules which provide standards, guidelines, and procedures for the receipt, processing, and administration of student applications and loans under this section.

95 Acts, ch 218, §23
NEW section

261.81 Work-study program.

The Iowa college work-study program is established to stimulate and promote the part-time employment of students attending Iowa postsecondary educational institutions, and the part-time or full-time summer employment of students registered for

classes at Iowa postsecondary institutions during the succeeding school year, who are in need of employment earnings in order to pursue postsecondary education. The program shall be administered by the commission. The commission shall adopt rules under chapter 17A to carry out the program. The employment under the program shall be employment by the postsecondary education institution itself or work in a public agency or private nonprofit organization under a contract between the institution or the commission and the agency or organization. The work shall not result in the displacement of employed workers or impair or affect existing contracts for services. Moneys used by an institution for the work-study program shall supplement and not supplant jobs and existing financial aid programs provided for students through the institution.

95 Acts, ch 70, §2
Section amended

261.85 Appropriation.

There is appropriated from the general fund of the state to the commission for each fiscal year the sum of two million nine hundred fifty thousand dollars for the work-study program.

From moneys appropriated in this section, one million five hundred thousand dollars shall be allocated to institutions of higher education under the state board of regents and community colleges and the remaining dollars appropriated in this section shall be allocated by the commission on the basis of need as determined by the portion of the federal formula for distribution of work study funds that relates to the current need of institutions.

95 Acts, ch 218, §24
For additional appropriations from the scholarship and tuition grant reserve fund for the work-study program, see 95 Acts, ch 218, §14
Unnumbered paragraph 1 amended

261.86 through 261.91 Repealed by 95 Acts, ch 70, § 3.

261.98 Access to education program. Repealed by 95 Acts, ch 70, § 3.

CHAPTER 261B

REGISTRATION OF POSTSECONDARY SCHOOLS

261B.6 List of schools.

The secretary shall maintain a list of registered schools and the list and the information submitted

under sections 261B.3 and 261B.4 are public records under chapter 22.

95 Acts, ch 67, §21
Section amended

CHAPTER 262

BOARD OF REGENTS

262.9 Powers and duties.

The board shall:

1. Each even-numbered year elect, from its members, a president of the board, who shall serve for two years and until a successor is elected and qualified.

2. Elect a president of each of the institutions of higher learning; a superintendent of each of the other institutions; a treasurer and a secretarial officer for each institution annually; professors, instructors, officers, and employees; and fix their compensation. Sections 279.12 through 279.19 and section 279.27 apply to employees of the Iowa braille and sight saving school and the state school for the deaf, who are licensed pursuant to chapter 272. In following those sections in chapter 279, the references to boards of directors of school districts shall be interpreted to apply to the board of regents.

3. Make rules for admission to and for the government of said institutions, not inconsistent with law.

4. Manage and control the property, both real and personal, belonging to the institutions. The board shall purchase or require the purchase of, when the price is reasonably competitive and the quality as intended, and in keeping with the schedule established in this subsection, soybean-based inks and plastic products with recycled content, including but not limited to plastic garbage can liners. For purposes of this subsection, "recycled content" means that the content of the product contains a minimum of thirty percent postconsumer material.

a. All inks purchased that are used internally or contracted for by the board shall be soybean-based to the extent formulations for such inks are available.

b. By July 1, 1995, a minimum of ten percent of the purchases of garbage can liners made by the board shall be plastic garbage can liners with recycled content. The percentage shall increase by ten percent annually until fifty percent of the purchases of garbage can liners are plastic garbage can liners with recycled content.

c. The board shall report to the general assembly on February 1 of each year, the following:

(1) A listing of plastic products which are regularly purchased by the board for which recycled content product alternatives are available, including the cost of the plastic products purchased and the cost of the recycled content product alternatives.

(2) Information relating to soybean-based inks and plastic garbage can liners regularly purchased by the board, including the cost of purchasing soybean-based inks and plastic garbage can liners with recycled content and the percentages of soybean-based inks and plastic garbage can liners with recycled content that have been purchased.

d. The department of natural resources shall review the procurement specifications currently used by the board to eliminate, wherever possible, dis-

crimination against the procurement of products manufactured with soybean-based inks.

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

f. The board, in conjunction with the department of natural resources, shall adopt rules to carry out the provisions of this section.

g. The department of natural resources shall cooperate with the board in all phases of implementing this section.

4A. The board shall, whenever technically feasible, purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from nonrenewable resources. For the purposes of this subsection, "packing material" means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace the contents of a package.

5. In conjunction with the recommendations made by the department of natural resources, purchase and use recycled printing and writing paper, with the exception of specialized paper when no recyclable product is available, in accordance with the schedule established in section 18.18; establish a wastepaper recycling program for all institutions governed by the board in accordance with recommendations made by the department of natural resources and the requirements of section 18.20; shall, in accordance with the requirements of section 18.6, require product content statements, the provision of information regarding on-site review of waste management in product bidding and contract procedures, and compliance with requirements regarding procurement specifications; and shall comply with the requirements for the purchase of lubricating oils and industrial oils as established pursuant to section 18.22.

6. With the approval of the executive council, acquire real estate for the proper uses of said institutions, and dispose of real estate belonging to said institutions when not necessary for their purposes. A disposal of such real estate shall be made upon such terms, conditions and consideration as the board may recommend and subject to the approval of the executive council. If real estate subject to sale hereunder has been purchased or acquired from appropriated funds, the proceeds of such sale shall be deposited with the treasurer of state and credited to the general fund of the state. There is hereby appropriated from the general fund of the state a sum equal to the proceeds so deposited and credited to the general fund of the state to the state board of regents which, with the prior approval of the executive council, may be used to purchase other real estate and buildings,

and for the construction and alteration of buildings and other capital improvements. All transfers shall be by state patent in the manner provided by law.

7. Accept and administer trusts and may authorize nonprofit foundations acting solely for the support of institutions governed by the board to accept and administer trusts deemed by the board to be beneficial. Notwithstanding the provisions of section 633.63, the board and such nonprofit foundations may act as trustee in such instances.

8. Direct the expenditure of all appropriations made to said institutions, and of any other moneys belonging thereto, but in no event shall the perpetual funds of the Iowa state university of science and technology, nor the permanent funds of the university of Iowa derived under Acts of Congress, be diminished.

9. Collect the highest rate of interest, consistent with safety, obtainable on daily balances in the hands of the treasurer of each institution.

10. With the approval of the executive council, publish, from time to time, and distribute, such circulars, pamphlets, bulletins, and reports as may be in its judgment for the best interests of the institutions under its control, the expense of which shall be paid out of any funds in the treasury not otherwise appropriated.

11. With consent of the inventor and in the discretion of the board, secure letters patent or copyright on inventions of students, instructors and officials, or take assignment of such letters patent or copyright and may make all necessary expenditures in regard thereto. That the letters patent or copyright on inventions when so secured shall be the property of the state, and the royalties and earnings thereon shall be credited to the funds of the institution in which such patent or copyright originated.

12. Perform all other acts necessary and proper for the execution of the powers and duties conferred by law upon it.

13. Grant leaves of absence with full or partial compensation to staff members to undertake approved programs of study, research, or other professional activity which in the judgment of the board will contribute to the improvement of the institutions. Any staff member granted such leave shall agree either to return to the institution granting such leave for a period of not less than two years or to repay to the state of Iowa such compensation as the staff member shall have received during such leave.

14. Lease properties and facilities, either as lessor or lessee, for the proper use and benefit of said institutions upon such terms, conditions, and considerations as the board deems advantageous, including leases with provisions for ultimate ownership by the state of Iowa, and to pay the rentals from funds appropriated to the institution for operating expenses thereof or from such other funds as may be available therefor.

15. In its discretion employ or retain attorneys or counselors when acting as a public employer for the

purpose of carrying out collective bargaining and related responsibilities provided for under chapter 20. This subsection shall supersede the provisions of section 13.7.

The state board of regents may make payment to an attorney or counselor for services rendered prior to July 1, 1978 to the state board of regents in connection with its responsibilities as a public employer pursuant to chapter 20.

16. In its discretion, adopt rules relating to the classification of students enrolled in institutions of higher education under the board who are residents of Iowa's sister states as residents or nonresidents for fee purposes.

17. In issuing bonds or notes under this chapter, chapter 262A, chapter 263A, or other provision of law, select and fix the compensation for, through a competitive selection procedure, attorneys, accountants, financial advisors, banks, underwriters, insurers, and other employees and agents which in the board's judgment are necessary to carry out the board's intention. Prior to the initial selection, the board shall establish a procedure which provides for a fair and open selection process including, but not limited to, the opportunity to present written proposals and personal interviews. The board shall maintain a list of firms which have requested to be notified of requests for proposal. The selection criteria shall take into consideration, but are not limited to, compensation, expenses, experience with similar issues, scheduling, ability to provide the services of individuals with specific knowledge in the relevant subject matter and length of engagement. The board may waive the requirements for a competitive selection procedure for any specific employment upon adoption of a resolution of the board stating why the waiver is in the public interest and shall provide the executive council with written notice of the granting of any such waiver.

18. Not less than thirty days prior to action by the board on any proposal to increase tuition, fees, or charges at one or more of the institutions of higher education under its control, send written notification of the amount of the proposed increase including a copy of the proposed tuition increase docket memorandum prepared for its consideration to the presiding officers of the student government organization of the affected institutions. The final decision on an increase in tuition or mandatory fees charged to all students at an institution for a fiscal year shall be made no later than the regular meeting held in November of the preceding fiscal year and shall be reflected in a final docket memorandum that states the estimated total cost of attending each of the institutions of higher education under the board's control. The regular meeting held in November shall be held in Ames, Cedar Falls, or Iowa City and shall not be held during the period in which classes have been suspended for Thanksgiving vacation.

19. Adopt policies and procedures for the use of telecommunications as an instructional tool at its

institutions. The policies and procedures shall include but not be limited to policies and procedures relating to programs, educational policy, practices, staff development, use of pilot projects, and the instructional application of the technology.

20. Establish a hall of fame for distinguished graduates at the Iowa braille and sight-saving school and at the Iowa school for the deaf.

21. Assist a nonprofit organization located in Sioux City in the creation of a tristate graduate center, comparable to the quad cities graduate center, located in the quad cities in Iowa. The purpose of the Sioux City graduate center shall be to create graduate education opportunities for students living in northwest Iowa.

22. Direct the administration of the Iowa minority academic grants for economic success program as established in section 261.101 for the institutions under its control.

23. Develop a policy and adopt rules relating to the establishment of tuition rates which provide a predictable basis for assessing and anticipating changes in tuition rates.

24. Develop a policy requiring oral communication competence of persons who provide instruction to students attending institutions under the control of the board. The policy shall include a student evaluation mechanism which requires student evaluation of persons providing instruction on at least an annual basis.

25. Develop a policy relating to the teaching proficiency of teaching assistants which provides a teaching proficiency standard, instructional assistance to, and evaluation of persons who provide instruction to students at the higher education institutions under the control of the board.

26. Explore, in conjunction with the department of education, the need for coordination between school districts, area education agencies, state board of regents institutions, and community colleges for purposes of delivery of courses, use of telecommunications, transportation, and other similar issues. Coordination may include, but is not limited to, coordination of calendars, programs, schedules, or telecommunications emissions. The state board shall develop recommendations as necessary, which shall be submitted in a report to the general assembly on a timely basis.

27. Develop and implement a written policy, which is disseminated during registration or orientation, addressing the following four areas relating to sexual abuse:

- a. Counseling.
- b. Campus security.
- c. Education, including prevention, protection, and the rights and duties of students and employees of the institution.

d. Facilitating the accurate and prompt reporting of sexual abuse to the duly constituted law enforcement authorities.

28. File a copy of the annual report required by the federal Student Right-To-Know and Campus Security Act, Pub. L. No. 101-542, with the division of criminal and juvenile justice planning of the department of human rights, along with a copy of the written policy developed pursuant to subsection 27.

29. Authorize the institutions of higher learning under the board to charge an interest rate, not to exceed the prime rate plus six percent, on delinquent bills. However, the board shall prohibit the institutions from charging interest on late tuition payments and room and board payments if financial aid payments to students enrolled in the institutions are delayed by the lending institution.

95 Acts, ch 44, §2; 95 Acts, ch 62, §3
Subsections 4 and 5 amended

262.75 Incentives for cooperating teachers.

A cooperating teacher incentive program is established to encourage experienced teachers to serve as cooperating teachers for student teachers enrolled in the institutions of higher education under the control of the board. An individual who submits evidence to an institution that the individual has satisfactorily served as a cooperating teacher for a student teacher from any of the institutions of higher education under the control of the board for the duration of the student teaching experience shall receive from the institution either a monetary recompense or a reduction in tuition for graduate hours of coursework equivalent to the value of the monetary recompense, rounded to the nearest whole credit hour. If, because of a policy adopted by the board of directors employing the teacher, the amount of the monetary recompense is not made available to the teacher for the teacher's own personal use or the salary paid to the cooperating teacher by the employing board is correspondingly reduced, the institution shall grant the teacher the reduction in tuition pursuant to this section in lieu of the monetary recompense.

In lieu of the payment of monetary recompense to a cooperating teacher, the cooperating teacher may direct that the monetary recompense be paid by the institution directly into a scholarship fund which has been established jointly by the board of directors of the school district that employs the teacher and the local teachers' association. In such cases, the cooperating teacher shall receive neither monetary recompense nor any reduction in tuition at the institution.

95 Acts, ch 173, §1
NEW unnumbered paragraph 2

CHAPTER 267

LIVESTOCK HEALTH ADVISORY COUNCIL

Department of agriculture and land stewardship to conduct study relating to animal health requirements, including health certificates for farm deer; 95 Acts, ch 134, §7

267.1 Definitions.

As used in this chapter,

1. "Iowa state university" means the Iowa state university of science and technology.
2. "Livestock" means swine, sheep, poultry, cattle, ostriches, rheas, or emus.

3. "Producer" means a person engaged in the business of producing livestock for profit.

95 Acts, ch 43, §10
Subsection 2 amended

CHAPTER 272C

CONTINUING EDUCATION AND REGULATION — PROFESSIONAL AND OCCUPATIONAL

272C.3 Authority of licensing boards.

1. Notwithstanding any other provision of this chapter, each licensing board shall have the powers to:

- a. Administer and enforce the laws and administrative rules provided for in this chapter and any other statute to which the licensing board is subject;
- b. Adopt and enforce administrative rules which provide for the partial re-examination of the professional licensing examinations given by each licensing board;
- c. Review or investigate, or both, upon written complaint or upon its own motion pursuant to other evidence received by the board, alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rule for licensee discipline;
- d. Determine in any case whether an investigation, or further investigation, or a disciplinary proceeding is warranted;
- e. Initiate and prosecute disciplinary proceedings;
- f. Impose licensee discipline;
- g. Petition the district court for enforcement of its authority with respect to licensees or with respect to other persons violating the laws which the board is charged with administering;
- h. Register or establish and register peer review committees;
- i. Refer to a registered peer review committee for investigation, review, and report to the board, any complaint or other evidence of an act or omission which the board reasonably believes to constitute cause for licensee discipline. However, the referral of any matter shall not relieve the board of any of its duties and shall not divest the board of any authority or jurisdiction;
- j. Determine and administer the renewal of licenses for periods not exceeding three years.
- k. Establish a licensee review committee for the purpose of evaluating and monitoring licensees who

self-report physical or mental impairments to the board. The board shall adopt rules for the establishment and administration of the committee, including but not limited to establishment of the criteria for eligibility for referral to the committee and the grounds for disciplinary action for noncompliance with committee decisions. Information in the possession of the board or the licensee review committee, under this paragraph, shall be subject to the confidentiality requirements of section 272C.6. Referral of a licensee by the board to a licensee review committee shall not relieve the board of any duties of the board and shall not divest the board of any authority or jurisdiction otherwise provided. A licensee who violates section 272C.10 or the rules of the board while under review by the licensee review committee shall be referred to the board for appropriate action.

2. Each licensing board may impose one or more of the following as licensee discipline:

- a. Revoke a license, or suspend a license either until further order of the board or for a specified period, upon any of the grounds specified in section 147.55, 148.6, 148B.7, 153.34, 154A.24, 169.13, 542B.21, 542C.21, 543B.29, 544A.13, 544B.15, or 602.3203 or chapter 151, 155, 507B or 522, as applicable, or upon any other grounds specifically provided for in this chapter for revocation of the license of a licensee subject to the jurisdiction of that board, or upon failure of the licensee to comply with a decision of the board imposing licensee discipline;
- b. Revoke, or suspend either until further order of the board or for a specified period, the privilege of a licensee to engage in one or more specified procedures, methods, or acts incident to the practice of the profession, if pursuant to hearing or stipulated or agreed settlement the board finds that because of a lack of education or experience, or because of negligence, or careless acts or omissions, or because of one or more intentional acts or omissions, the licensee has demonstrated a lack of qualifications which are

necessary to assure the residents of this state a high standard of professional and occupational care;

c. Impose a period of probation under specified conditions, whether or not in conjunction with other sanctions;

d. Require additional professional education or training, or re-examination, or any combination, as a condition precedent to the reinstatement of a license or of any privilege incident thereto, or as a condition precedent to the termination of any suspension;

e. Impose civil penalties by rule, if the rule specifies which offenses or acts are subject to civil penalties. The amount of civil penalty shall be in the discretion of the board, but shall not exceed one thousand dollars. Failure to comply with the imposition of a civil penalty may be grounds for further license discipline;

f. Issue a citation and warning respecting licensee behavior which is subject to the imposition of other sanctions by the board.

3. The powers conferred by this section upon a licensing board shall be in addition to powers speci-

fied elsewhere in the Code. The powers of any other person specified elsewhere in the Code shall not limit the powers of a licensing board conferred by this section, nor shall the powers of such other person be deemed limited by the provisions of this section.

4. Nothing contained in this section shall be construed to prohibit informal stipulation and settlement by a board and a licensee of any matter involving licensee discipline. However, licensee discipline shall not be agreed to or imposed except pursuant to a written decision which specifies the sanction and which is entered by the board and filed.

All health-care boards shall file written decisions which specify the sanction entered by the board with the Iowa department of public health which shall be available to the public upon request. All nonhealth-care boards shall have on file the written and specified decisions and sanctions entered by the board and shall be available to the public upon request.

95 Acts, ch 72, §1
Subsection 1, NEW paragraph k

CHAPTER 272D

HIGHER EDUCATION STRATEGIC PLANNING COUNCIL

Repealed effective July 1, 1995,
by 94 Acts, ch 1193, §37

CHAPTER 273

AREA EDUCATION AGENCIES

273.2 Area education agencies established — powers — services and programs.

There are established throughout the state fifteen area education agencies, each of which is governed by an area education agency board of directors. The boundaries of an area education agency shall not divide a school district. The director of the department of education shall change boundaries of area education agencies to take into account mergers of local school districts and changes in boundaries of local school districts, when necessary to maintain the policy of this chapter that a local school district shall not be a part of more than one area education agency.

An area education agency established under this chapter is a body politic as a school corporation for the purpose of exercising powers granted under this chapter, and may sue and be sued. An area education agency may hold property and execute lease-purchase agreements pursuant to section 273.3, subsection 7, and if the lease exceeds ten years or the purchase price of the property to be acquired pursuant to a lease-purchase agreement exceeds twenty-five thousand dollars, the area education agency shall conduct a public hearing on the proposed lease-

purchase agreement and receive approval from the area education agency board of directors and the director of the department of education before entering into the agreement.

The area education agency board shall furnish educational services and programs as provided in sections 273.1 to 273.9 and chapter 256B to the pupils enrolled in public or nonpublic schools located within its boundaries which are on the list of accredited schools pursuant to section 256.11. The programs and services provided shall be at least commensurate with programs and services existing on July 1, 1974. The programs and services provided to pupils enrolled in nonpublic schools shall be comparable to programs and services provided to pupils enrolled in public schools within constitutional guidelines.

The area education agency board shall provide for special education services and media services for the local school districts in the area and shall encourage and assist school districts in the area to establish programs for gifted and talented children.

The area education agency board may provide for the following programs and services to local school districts, and at the request of local school districts to

providers of child development services who have received grants under chapter 256A from the child development coordinating council, within the limits of funds available:

1. In-service training programs for employees of school districts and area education agencies, provided at the time programs and services are established they do not duplicate programs and services available in that area from the universities under the state board of regents and from other universities and four-year institutions of higher education in Iowa. The in-service training programs shall include but are not limited to regular training concerning mental or emotional disorders which may afflict children and the impact children with such disorders have upon their families.

2. Educational data processing pursuant to section 256.9, subsection 11.

3. Research, demonstration projects and models, and educational planning for children under five years of age through grade twelve and children requiring special education as defined in section

256B.2 as approved by the state board of education.

4. Auxiliary services for nonpublic school pupils as provided in section 256.12. However, if auxiliary services are provided their funding shall be based on the type of service provided.

5. Other educational programs and services for children under five years through grade twelve and children requiring special education as defined in section 256B.2 and for employees of school districts and area education agencies as approved by the state board of education.

The board of directors of an area education agency shall not establish programs and services which duplicate programs and services which are or may be provided by the community colleges under the provisions of chapter 260C. An area education agency shall contract, whenever practicable, with other school corporations for the use of personnel, buildings, facilities, supplies, equipment, programs, and services.

95 Acts, ch 182, §20
Subsection 1 amended

CHAPTER 275

REORGANIZATION OF SCHOOL DISTRICTS

275.12 Petition — method of election.

1. A petition describing the boundaries, or accurately describing the area included therein by legal descriptions, of the proposed district, which boundaries or area described shall conform to plans developed or the petition shall request change of the plan, shall be filed with the area education agency administrator of the area education agency in which the greatest number of registered voters reside. However, the area education agency administrator shall not accept a petition if any of the school districts affected have approved the issuance of general obligation bonds at an election pursuant to section 296.6 during the preceding six-month period. The petition shall be signed by registered voters in each existing school district or portion affected equal in number to at least twenty percent of the number of registered voters or four hundred registered voters, whichever is the smaller number.

2. The petition filed under subsection 1 shall also state the name of the proposed school district and the number of directors which may be either five or seven and the method of election of the school directors of the proposed district. The method of election of the directors shall be one of the following optional plans:

a. Election at large from the entire district by the electors of the entire district.

b. Division of the entire school district into designated geographical single director or multi-director subdistricts on the basis of population for each director, to be known as director districts, each of which director districts shall be represented on the school board by one or more directors who shall be residents

of the director district but who shall be elected by the vote of the electors of the entire school district. The boundaries of the director districts and the area and population included within each district shall be such as justice, equity, and the interests of the people may require. Changes in the boundaries of director districts shall not be made during a period commencing sixty days prior to the date of the annual school election. Insofar as may be practicable, the boundaries of the districts shall follow established political or natural geographical divisions.

c. Election of not more than one-half of the total number of school directors at large from the entire district and the remaining directors from and as residents of designated single-member or multi-member director districts into which the entire school district shall be divided on the basis of population for each director. In such case, all directors shall be elected by the electors of the entire school district. Changes in the boundaries of director districts shall not be made during a period commencing sixty days prior to the date of the annual school election.

d. Division of the entire school district into designated geographical single director or multi-director subdistricts on the basis of population for each director, to be known as director districts, each of which director districts shall be represented on the school board by one or more directors who shall be residents of the director district and who shall be elected by the voters of the director district. Place of voting in the director districts shall be designated by the commissioner of elections. Changes in the boundaries of director districts shall not be made during a period

commencing sixty days prior to the date of the annual school election.

e. In districts having seven directors, election of three directors at large by the electors of the entire district, one at each annual school election, and election of the remaining directors as residents of and by the electors of individual geographic subdistricts established on the basis of population and identified as director districts. Boundaries of the subdistricts shall follow precinct boundaries, insofar as practicable, and shall not be changed less than sixty days prior to the annual school election.

3. If the petition proposes the division of the school district into director districts, the boundaries of the proposed director districts shall be described in the petition and shall be drawn according to the standards described in section 275.23A, subsection 1.

4. The area education agency board in reviewing the petition as provided in sections 275.15 and 275.16 shall review the proposed method of election of school directors and may change or amend the plan in any manner, including the changing of boundaries of director districts if proposed, or to specify a different method of electing school directors as may be required by law, justice, equity, and the interest of the people. In the action, the area education agency board shall follow the same procedure as is required by sections 275.15 and 275.16 for other action on the petition by the area education agency board. The area education agency shall ascertain that director district boundary lines comply with the provisions of section 275.23A, subsection 1, and shall make adjustments as necessary.

5. The petition may also include a provision that the voter-approved physical plant and equipment levy provided in section 298.2 will be voted upon at the election conducted under section 275.18.

95 Acts, ch 49, §5
Subsection 1 amended

275.22 Canvass and return.

The precinct election officials shall count the ballots, and make return to and deposit the ballots with the county commissioner of elections, who shall enter the return of record in the commissioner's office. The election tally lists, including absentee ballots, shall be listed by individual school district. The county commissioner of elections shall certify the results of the election to the area education agency administrator. If the majority of the votes cast by the registered voters is in favor of the proposition, as provided in section 275.20, a new school corporation shall be organized. If the majority of votes cast is opposed to the proposition, a new petition describing the identical or similar boundaries shall not be filed for at least six months from the date of the election. If territory is excluded from the reorganized district, action pursuant to section 274.37 shall be taken prior to the effective date of reorganization. The secretary of the new school corporation shall file a written description of the boundaries as provided in section 274.4.

95 Acts, ch 67, §53
Terminology change applied

275.23A Redistricting following federal decennial census.

1. School districts which have directors who represent director districts as provided in section 275.12, subsection 2, paragraphs "b", "c", "d", and "e", shall be divided into director districts according to the following standards:

a. All director district boundaries shall follow the boundaries of areas for which official population figures are available from the most recent federal decennial census and, wherever possible, shall follow precinct boundaries.

b. To the extent possible in order to comply with paragraph "a", all director districts shall be as nearly equal as practicable to the ideal population for the districts as determined by dividing the number of districts to be established into the population of the school district.

c. All districts shall be composed of contiguous territory as compact as practicable unless the school district is composed of marginally adjacent territory. A school district which is composed of marginally adjacent territory shall have director districts composed of contiguous territory to the extent practicable.

d. Consideration shall not be given to the addresses of incumbent officeholders, political affiliations of registered voters, previous election results, or demographic information other than population head counts, except as required by the Constitution and the laws of the United States.

e. Cities shall not be divided into two or more districts unless the population of the city is greater than the ideal size of a director district. Cities shall be divided into the smallest number of director districts possible.

2. Following each federal decennial census the school board shall determine whether the existing director district boundaries meet the standards in subsection 1 according to the most recent federal decennial census. If necessary, the board of directors shall redraw the director district boundaries. The director district boundaries shall be described in a resolution adopted by the school board. The resolution shall be adopted no earlier than November 15 of the year immediately following the year in which the federal decennial census is taken nor later than April 30 of the second year immediately following the year in which the federal decennial census is taken. A copy of the plan shall be filed with the area education agency administrator of the area education agency in which the school's electors reside.

3. The school board shall notify the state commissioner of elections and the county commissioner of elections of each county in which a portion of the school district is located when the boundaries of director districts are changed. The notices of changes submitted to the state commissioner shall be post-marked no later than the deadline for adoption of the resolution under subsection 2. The board shall provide the commissioners with maps showing the new boundaries and shall also certify to the state commissioner the populations of the new director districts as determined under the latest federal decen-

nial census. If, following a federal decennial census a school district elects not to redraw director districts under this section, the school board shall so certify to the state commissioner of elections, and the school board shall also certify to the state commissioner the populations of the retained director districts as determined under the latest federal decennial census. If the state commissioner determines that a district board has failed to make the required changes by the dates specified by this section, the state commissioner of elections shall make or cause to be made the necessary changes as soon as possible. The state commissioner shall assess any expenses incurred to the school district. The state commissioner of elections may request the services of personnel of and materials available to the legislative service bureau to assist the state commissioner in making any required boundary changes.

4. If more than one incumbent director resides in a redrawn director district, the terms of office of the affected directors expire at the organizational meeting of the board of directors following the next regular school election following the adoption of the redrawn districts.

5. The boundary changes under this section take effect July 1 following their adoption for the next regular school election.

6. Section 275.9 and sections 275.14 through 275.23 do not apply to changes in director district boundaries made under this section.

95 Acts, ch 189, §18
Subsection 1 amended

275.27 Community school districts — part of area education agency.

School districts created or enlarged under this chapter are community school districts and are part of the area education agency in which the greatest number of registered voters of the district reside at the time of the special election called for in section 275.18, and sections of the Code applicable to the common schools generally are applicable to these districts in addition to the powers and privileges conferred by this chapter. If a school district, created or enlarged under this chapter and assigned to an area education agency under this section, can demonstrate that students in the district were utilizing a service or program prior to the formation of the new or enlarged district that is unavailable from the area education agency to which the new or enlarged district is assigned, the district may be reassigned to the area education agency which formerly provided the service or program, upon an affirmative majority vote of the boards of the affected area education agencies to permit the change.

95 Acts, ch 49, §6
Section amended

275.51 Dissolution commission.

As an alternative to school district reorganization prescribed in this chapter, the board of directors of a school district may establish a school district disso-

lution commission to prepare a proposal of dissolution of the school district and attachment of all of the school district to one or more contiguous school districts and to include in the proposal a division of the assets and liabilities of the dissolving school district. A school district dissolution commission shall be established by the board of directors of a school district if a dissolution proposal has been prepared by registered voters who reside within the district. The proposal must contain the names of the proposed members of the commission and be accompanied by a petition which has been signed by at least twenty percent of the registered voters.

The dissolution commission shall consist of seven members appointed by the board for a term of office ending either with a report to the board that no proposal can be approved or on the date of the election on the proposal. Members of the dissolution commission must be eligible electors who reside in the school district, not more than three of whom may be members of the board of directors of the school district. Members shall be appointed from throughout the school district and should represent the various socioeconomic factors present in the school district.

Members of the dissolution commission shall serve without compensation and may be appointed to a subsequent commission. A vacancy on the commission shall be filled in the same manner as the original appointment was made.

The board of the school district shall certify to the area education agency board that a commission has been formed, the names and addresses of commission members, and that the commission members represent the various geographic areas and socioeconomic factors present in the district.

95 Acts, ch 49, §7
Unnumbered paragraph 1 amended

275.55A Attendance in other district.

A student enrolled in ninth, tenth, or eleventh grade during the school year preceding the effective date of a dissolution proposal, who was a resident of the school district that dissolved, may enroll in a school district to which territory of the school district that dissolved was attached until the student's graduation from high school, unless the student was expelled or suspended from school and the conditions of expulsion or suspension have not been met. The student under expulsion or suspension shall not be enrolled until the board of directors of the school district to which territory of the dissolved school district was attached approves, by majority vote, the enrollment of the student. Notwithstanding section 282.24, the district of residence of the student, determined in the dissolution proposal, shall pay tuition to the school district selected by the student in an amount not to exceed the district cost per pupil of the district of residence and the school district selected by the student shall accept that tuition payment and enroll the student.

95 Acts, ch 218, §26
Section amended

CHAPTER 277

SCHOOL ELECTIONS

277.4 Nominations required.

Nomination papers for all candidates for election to office in each school district shall be filed with the secretary of the school board not more than sixty-four days, nor less than forty days before the election. Nomination petitions shall be filed not later than five p.m. on the last day for filing. If the school board secretary is not readily available during normal office hours, the secretary may designate a full-time employee of the school district who is ordinarily available to accept nomination papers under this section. On the final date for filing nomination papers the office of the school secretary shall remain open until five p.m.

Each candidate shall be nominated by petition. If the candidate is running for an at-large seat in the district, the petition must be signed by at least ten eligible electors, or a number of eligible electors equal in number to not less than one percent of the registered voters of the school district. If the candidate is running for a seat which is voted for only by the voters of a director district, the petition must be signed by at least ten eligible electors of the director district or a number of eligible electors equal in number to not less than one percent of the registered voters in the director district. A petition filed under this section shall not be required to have more than one hundred signatures. Signers of nomination petitions shall include their addresses and the date of signing, and must reside in the same director district as the candidate if directors are elected by the voters of a director district, rather than at large. A person may sign nomination petitions for more than one

candidate for the same office, and the signature is not invalid solely because the person signed nomination petitions for one or more other candidates for the office. The petition shall be filed with the affidavit of the candidate being nominated, stating the candidate's name, place of residence, that such person is a candidate and is eligible for the office the candidate seeks, and that if elected the candidate will qualify for the office. The affidavit shall also state that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted, and never pardoned, of a felony or other infamous crime.

The secretary of the school board shall accept the petition for filing if on its face it appears to have the requisite number of signatures and if it is timely filed. The secretary of the school board shall note upon each petition and affidavit accepted for filing the date and time that the petition was filed. The secretary of the school board shall deliver all nomination petitions, together with the complete text of any public measure being submitted by the board to the electorate, to the county commissioner of elections not later than five o'clock p.m. on the day following the last day on which nomination petitions can be filed.

Any person on whose behalf nomination petitions have been filed under this section may withdraw as a candidate by filing a signed statement to that effect with the secretary at any time prior to five o'clock p.m. on the thirty-fifth day before the election.

95 Acts, ch 189, §19
Unnumbered paragraph 2 amended

CHAPTER 279

DIRECTORS — POWERS AND DUTIES

279.12 Contracts — teachers — insurance — educational leave.

The board shall carry into effect any instruction from the regular election upon matters within the control of the voters, and shall elect all teachers and make all contracts necessary or proper for exercising the powers granted and performing the duties required by law, and may establish and pay all or any part thereof from school district funds the cost of group health insurance plans, nonprofit group hospital service plans, nonprofit group medical service plans and group life insurance plans adopted by the board for the benefit of employees of the school district, but the board may authorize any subdirector to employ teachers for the school in the subdirector's

subdistrict; but no such employment by a subdirector shall authorize a contract, the entire period of which is wholly beyond the subdirector's term of office.

The board may enter into an agreement pursuant to chapter 28E with another school district or an area education agency for the purpose of jointly procuring a group health insurance plan, nonprofit group hospital service plan, nonprofit group medical service plan, or group life insurance plan for the benefit of the districts or agencies which are parties to the agreement. Such plan may include a cafeteria plan as defined in 26 C.F.R. § 1.125-2T. An agreement entered into pursuant to this paragraph shall not be construed to establish a multiple employer welfare arrangement as defined in section 3 of the federal

Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002, paragraph 40.

The board may approve a policy for educational leave for licensed school employees and for reimbursement for tuition paid by licensed school employees for courses approved by the board. For the purpose of this section, "educational leave" means a leave granted to an employee for the purpose of study including study in areas outside of a teacher's area of specialization, travel, or other reasons deemed by the board to be of value to the school system.

95 Acts, ch 22, §1
Section amended

279.39 School buildings.

The board of any school corporation shall establish attendance centers and provide suitable buildings for each school in the district and may at the regular or a special meeting call a special election to submit to the registered voters of the district the question of voting a tax or authorizing the board to issue bonds, or both.

95 Acts, ch 67, §53
Terminology change applied

279.51 Programs for at-risk children.

1. There is appropriated from the general fund of the state to the department of education for the fiscal year beginning July 1, 1990, the sum of eight million seven hundred thousand dollars. For each fiscal year beginning on or after July 1, 1995, there is appropriated the sum which was appropriated for the fiscal year commencing July 1, 1994.

The moneys shall be allocated as follows:

a. Two hundred seventy-five thousand dollars of the funds appropriated shall be allocated to the area education agencies to assist school districts in developing program plans and budgets under this section and to assist school districts in meeting other responsibilities in early childhood education.

b. For the fiscal year beginning July 1, 1990, four million six hundred twenty-five thousand dollars, and for each fiscal year thereafter, six million one hundred twenty-five thousand dollars of the funds appropriated shall be allocated to the child development coordinating council established in chapter 256A for the purposes set out in subsection 2 of this section and section 256A.3.

c. For each of the fiscal years during the fiscal period beginning July 1, 1994, and ending June 30, 1998, eight hundred thousand dollars of the funds appropriated shall be allocated for the school-based youth services education program established in subsection 3. For each of the fiscal years during the fiscal period beginning July 1, 1994, and ending June 30, 1998, twenty thousand dollars of the funds allocated under this paragraph shall be expended for staff development, research, and the development of strategies for coordination with community-based youth organizations and agencies. A school that received a grant during the fiscal year beginning July 1, 1993, is ineligible to receive a grant under this paragraph.

Subject to the approval of the state board of education, the allocation made in this paragraph may be renewed for additional four-year periods of time.

d. For the fiscal year beginning July 1, 1990, three million dollars, and for each fiscal year thereafter, four million dollars of the funds appropriated shall be allocated as grants to school districts that have elementary schools that demonstrate the greatest need for programs for at-risk students with preference given to innovative programs for the early elementary school years. The grant allocations made in this paragraph may be renewed for additional periods of time. Of the amount allocated under this paragraph for each fiscal year, seventy-five thousand dollars shall be allocated to school districts which have an actual student population of ten thousand or less and have an actual non-English speaking student population which represents greater than five percent of the total actual student population for grants to elementary schools in those districts.

e. Additional funds available under this subsection as a result of additional growth provided to the appropriation in subsection 1 shall be distributed equally between paragraphs "b" and "d".

f. For each of the fiscal years during the fiscal period beginning July 1, 1994, and ending June 30, 1998, fifty thousand dollars of the funds appropriated shall be granted to each of the four schools that received grants under subsection 3 during the fiscal year beginning July 1, 1993, to allow for expansion and to include identified minimum services if the school submits a program plan pursuant to subsection 3.

g. Not later than January 15, 1991, the department of education shall submit a report to the general assembly listing the moneys allocated under each of the paragraphs of this section and anticipated funding needed for the remainder of the fiscal year for each of those paragraphs. If the moneys appropriated under this section are insufficient to fund the grants under paragraphs "b" and "d", the department of education shall certify that information in the report and it is the intent of the general assembly that moneys shall be appropriated for the fiscal year beginning July 1, 1990, to supplement the appropriation in this section in an amount sufficient to fund grants under paragraphs "b" and "d", but not greater than two million five hundred thousand dollars.

Notwithstanding section 256A.3, subsection 6, of the amount appropriated for the fiscal year beginning July 1, 1990, less the amount allocated under paragraph "a", three and thirty-three hundredths percent may be used for administrative costs.

In succeeding fiscal years, notwithstanding section 256A.3, subsection 6, of the amount appropriated for a fiscal year, less the amount allocated under paragraph "a", three and thirty-three hundredths percent may be used for administrative costs. However, if the amount appropriated for the fiscal year, less the amount allocated under paragraph "a", times three and thirty-three hundredths percent is greater than the amount received for use for administrative costs

during the fiscal year beginning July 1, 1990, then the amount to be used for administrative costs shall be reduced to equal the amount received during the fiscal year beginning July 1, 1990.

2. Funds allocated under subsection 1, paragraph "b", shall be used by the child development coordinating council for the following:

a. To continue funding for programs previously funded by grants awarded under section 256A.3 and to provide additional grants under section 256A.3. The council shall seek to provide grants on the basis of the location within the state of children meeting at-risk definitions.

b. At the discretion of the child development coordinating council, award grants for the following:

(1) To school districts to establish programs for three-year, four-year, and five-year old at-risk children which are a combination of preschool and full-day kindergarten.

(2) To provide grants to provide educational support services to parents of at-risk children age birth through three years.

3. A school-based youth services education program is established. The department of education, in consultation with the department of human services, the department of employment services, the Iowa department of public health, the division of criminal and juvenile justice planning of the department of human rights, institutions of higher learning with applicable programs, and the division of job training and entrepreneurship assistance of the department of economic development, shall develop a four-year demonstration grant program that commences in the fiscal year beginning July 1, 1994. The department shall provide grants to individual or consortiums of elementary, middle, or high schools to establish school-based youth services programs, in conjunction with local agencies and community organizations, based upon program plans filed by the board of directors of the school district. The department shall provide grants to establish model programs in at least the following three size categories:

a. A school district with an enrollment of less than one thousand two hundred.

b. A school district with an enrollment of one thousand two hundred to four thousand nine hundred ninety-nine.

c. A school district with an enrollment of at least five thousand.

Priority shall be weighted toward need and given to schools whose plans indicate a high degree of active participation by community-based youth organizations and agencies, and to schools with student populations characterized by high rates of a number of the following: school dropout and absenteeism; teenage pregnancy; juvenile court involvement; family conflict; unemployment; teenage suicide; and child and youth mental health, substance abuse, and other health problems. The department shall coordinate an evaluation initiative with the approved projects designed to investigate program effectiveness in reducing these rates within communities. In

developing the evaluation initiative, the department shall consult with the department of human services, the department of employment services, the Iowa department of public health, the division of criminal and juvenile justice planning of the department of human rights, institutions of higher learning with applicable programs, and the division of job training and entrepreneurship assistance of the department of economic development.

Programs shall provide at a minimum recreation opportunities, personal skills development, basic academic skills development, family interaction opportunities, and mentoring. Additional objectives of the programs shall be: to increase the ability of existing agencies within the community to address the multiple problems of children and youth and to coordinate their activities and to facilitate joint planning to make the most economic and innovative use of community resources. Priority shall be given to programs that provide access to a center for children and youth after school, in the evening, and on weekends, and during the summer and that provide a twenty-four-hour telephone hotline or similar service, and that provide access to day care or on-site child day care. Programs shall at a minimum provide career development services, mental health and family counseling services, and primary health care services that include but are not limited to physical examinations, immunizations, hearing and vision screening, and preventive and primary health care services, in the context of the educational needs of the students. Programs shall not include abortion counseling or the dispensing of contraceptives.

The plan shall include the appointment by the board of a local advisory board for each proposed program, which at a minimum shall include a representative of the private industry council serving the area, parents of children enrolled in the school, a teacher recommended by the local teachers association, a representative from the health and mental health community in the area, teenagers enrolled in the school and recommended by the school student government, a representative from the nonprofit provider community, and a representative from the juvenile court system serving the area. Management of the program shall be by the school or by a nonprofit youth service organization. As used in this subsection, "youth service" means recreational services, employment services, civic services, or juvenile treatment services.

Program proposals shall include a program evaluation component and a written commitment from the school principal and the board of directors that the school will work to coordinate and integrate existing school services and activities with the center and shall include letters of support for the proposal from the local teachers association; parent-teacher organizations; community organizations; nonprofit agencies providing social services, health, or career development services in the area; the juvenile court system serving the area; and the area private industry council.

Grants for the program shall not be used to construct a new facility or to renovate an existing structure.

Program proposals shall include a contribution of at least twenty percent of the total costs of the program, which can include "in-kind" services. Partnerships between the public and private sectors to provide employment and training opportunities for youth served by the program are particularly encouraged. The budget for a proposed program shall not exceed two hundred thousand dollars per year.

4. The department shall seek assistance from the first in the nation in education foundation established in chapter 257A and other foundations and public and private agencies in the evaluation of the programs funded under this section, and in the provision of support to school districts in developing and implementing the programs funded under this section.

5. The state board of education shall adopt rules under chapter 17A for the administration of this section.

95 Acts, ch 209, §14
Additional appropriation; contingencies; 95 Acts, ch 209, §6, 7, and 8
Subsection 1, unnumbered paragraph 1 amended

279.53 Additional enrichment amount for asbestos projects.

1. A school board may raise an additional enrichment amount for purposes of funding an asbestos project under section 279.52 as provided in this section.

2. The board shall determine the additional enrichment amount needed for an asbestos project, within the limits of this section, and shall direct the county commissioner of elections to submit the question of whether to raise that amount under this section and section 279.54 for a period not exceeding five years, to the registered voters of the school district at a regular school election held during September of the base year or at a special election held not later than February 15 of the base year or Feb-

ruary 15, 1995, whichever is earlier. Only one election on the question shall be held during a twelve-month period. If a majority of those voting on the question favors raising the additional enrichment amount for an asbestos project, the board may include the approved amount in its certified budget.

3. The additional enrichment amount needed for an asbestos project shall be raised within the limits provided in this section by an enrichment property tax or by a combination of an enrichment property tax and a school district income surtax. The method of raising the additional enrichment amount shall be determined by the board. Subject to the limitation in section 298.14, if the board uses a combination of an enrichment property tax and a school district income surtax, for each fiscal year the board shall determine the percent of income surtax to be expressed as full percentage points, not to exceed twenty percent.

95 Acts, ch 67, §53
Terminology change applied

279.58 School dress code policies.

1. The general assembly finds and declares that the students and the administrative and instructional staffs of Iowa's public schools have the right to be safe and secure at school. Gang-related apparel worn at school draws attention away from the school's learning environment and directs it toward thoughts or expressions of violence, bigotry, hate, and abuse.

2. The board of directors of a school district may adopt, for the district or for an individual school within the district, a dress code policy that prohibits students from wearing gang-related or other specific apparel if the board determines that the policy is necessary for the health, safety, or positive educational environment of students and staff in the school environment or for the appropriate discipline and operation of the school. Adoption and enforcement of a dress code policy is not a violation of section 280.22.

95 Acts, ch 191, §20
NEW section

CHAPTER 280

UNIFORM SCHOOL REQUIREMENTS

280.5 Display of United States flag and Iowa state flag.

The board of directors of each public school district and the authorities in charge of each nonpublic school shall provide and maintain a suitable flagstaff on each school site under its control, and the United States flag and the Iowa state flag shall be raised on all school days when weather conditions are suitable.

95 Acts, ch 1, §4
Section amended

280.17A Procedures for handling dangerous weapons.

The board of directors of a public school and the authorities in control of a nonpublic school shall prescribe procedures requiring school officials to report to local law enforcement agencies any dangerous weapon, as defined in section 702.7, possessed on school premises in violation of school policy or state law.

95 Acts, ch 191, §21
NEW section

280.17B Students suspended or expelled for possession of dangerous weapons.

The board of directors of a public school and the authorities in control of a nonpublic school shall prescribe procedures for continued school involvement with a student who is suspended or expelled for possession of a dangerous weapon, as defined in section 702.7, on school premises in violation of state law and for the reintegration of the student into the school following the suspension or expulsion.

95 Acts, ch 191, §22
NEW section

280.21B Expulsion — weapons in school.

The board of directors of a school district and the authorities in charge of a nonpublic school which receives services supported by federal funds shall expel from school for a period of not less than one year a student who is determined to have brought a

weapon to a school or knowingly possessed a weapon at a school under the jurisdiction of the board or the authorities. However, the superintendent or chief administering officer of a school or school district may modify expulsion requirements on a case-by-case basis. This section shall not be construed to prevent the board of directors of a school district or the authorities in charge of a nonpublic school that have expelled a student from the student's regular school setting from providing educational services to the student in an alternative setting. If both this section and section 282.4 apply, this section takes precedence over section 282.4. For purposes of this section, "weapon" means a firearm as defined in 18 U.S.C. § 921. This section shall be construed in a manner consistent with the federal Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.

95 Acts, ch 191, §23
NEW section

CHAPTER 282

SCHOOL ATTENDANCE AND TUITION

282.4 Suspension — expulsion.

1. The board may, by a majority vote, expel any student from school for a violation of the regulations or rules established by the board, or when the presence of the student is detrimental to the best interests of the school. The board may confer upon any teacher, principal, or superintendent the power temporarily to suspend a student, notice of the suspension being at once given in writing to the president of the board.

2. A student who commits an assault, as defined under section 708.1, against a school employee in a school building, on school grounds, or at a school-sponsored function shall be suspended for a time to be determined by the principal. Notice of the suspension shall be immediately sent to the president of the board. By special meeting or at the next regularly scheduled board meeting, the board shall review the suspension and decide whether to hold a disciplinary hearing to determine whether or not to order further sanctions against the student, which may include expelling the student. In making its decision, the board shall consider the best interests of the school district, which shall include what is best to protect and ensure the safety of the school employees and students from the student committing the assault.

A student shall not be suspended or expelled pursuant to this section if the suspension or expulsion would violate the federal Individuals with Disabilities Education Act.

3. Notwithstanding section 282.6, if a student has been expelled or suspended from school and has not met the conditions of the expulsion or suspension and if the student, or the parent or guardian of the student, changes district of residence, the student shall not be enrolled in the new district of residence until the board of directors of the new district of

residence approves, by a majority vote, the enrollment of the student.

95 Acts, ch 218, §27
Section amended

282.5 Readmission of student.

When a student is suspended by a teacher, principal, or superintendent, pursuant to section 282.4, the student may be readmitted by the teacher, principal, or superintendent, but when expelled by the board the student may be readmitted only by the board or in the manner prescribed by the board.

95 Acts, ch 218, §28
Section amended

282.31 Funding for special programs.

1. *a.* A child who lives in a facility pursuant to section 282.30, subsection 1, paragraph "a", and who is not enrolled in the educational program of the district of residence of the child, shall receive appropriate educational services. The area education agency shall submit a proposed program and budget to the department of education by January 1 for the next succeeding school year. The department of education shall review and approve or modify the program and proposed budget and shall notify the department of revenue and finance and the area education agency of its action by February 1. The department of revenue and finance shall pay the approved budget amount for an area education agency in monthly installments beginning September 15 and ending June 15 of the next succeeding school year. The installments shall be as nearly equal as possible as determined by the department of management, taking into consideration the relative budget and cash position of the state's resources. The

department of revenue and finance shall transfer the approved budget amount for an area education agency from the moneys appropriated under section 257.16 and make the payment to the area education agency. The area education agency shall submit an accounting for the actual cost of the program to the department of education by August 1 of the following school year. The department shall review and approve or modify all expenditures incurred in compliance with the guidelines pursuant to section 256.7, subsection 10, and shall notify the department of revenue and finance of the approved accounting amount. The approved accounting amount shall be compared with any amounts paid by the department of revenue and finance to the area education agency and any differences added to or subtracted from the October payment made under this paragraph for the next school year. Any amount paid by the department of revenue and finance shall be deducted monthly from the state foundation aid paid under section 257.16 to all school districts in the state during the subsequent fiscal year. The portion of the total amount of the approved budget that shall be deducted from the state aid of a school district shall be the same as the ratio that the budget enrollment for the budget year of the school district bears to the total budget enrollment in the state for that budget year in which the deduction is made.

b. A child who lives in a facility or home pursuant to section 282.19, and who does not require special education and who is not enrolled in the educational program of the district of residence of the child, shall be included in the basic enrollment of the school district in which the facility or home is located.

However, on June 30 of a school year, if the board of directors of a school district determines that the number of children under this paragraph who were counted in the basic enrollment of the school district on the third Friday of September of that school year is fewer than the sum of the number of months all children were enrolled in the school district under this paragraph during the school year divided by nine, the secretary of the school district may submit a claim to the department of education by August 1 following the school year for an amount equal to the district cost per pupil of the district for the previous school year multiplied by the difference between the number of children counted and the number of children calculated by the number of months of enrollment. The amount of the claim shall be paid by the department of revenue and finance to the school district by October 1. The department of revenue and finance shall transfer the total amount of the approved claim of a school district from the moneys appropriated under section 257.16 and the amount paid shall be deducted monthly from the state foundation aid paid to all school districts in the state during the remainder of the subsequent fiscal year in the manner provided in paragraph "a".

2. a. The actual special education instructional costs incurred for a child who lives in a facility pursuant to section 282.19 or for a child who is placed in a facility or home pursuant to section 282.29, who re-

quires special education and who is not enrolled in the educational program of the district of residence of the child but who receives an educational program from the district in which the facility or home is located, shall be paid by the district of residence of the child to the district in which the facility or home is located, and the costs shall include the cost of transportation.

b. A child shall not be denied special education programs and services because of a dispute over the determination of district of residence of the child. The director of the department of education shall determine the district of residence when a dispute arises regarding the determination of the district of residence for a child who requires special education pursuant to this subsection.

3. The actual special education instructional costs, including transportation, for a child who requires special education shall be paid by the department of revenue and finance to the school district in which the facility or home is located, only when a district of residence cannot be determined, and the child was not included in the weighted enrollment of any district pursuant to section 256B.9, and the payment pursuant to subsection 2, paragraph "a", was not made by any district. The district shall submit a proposed program and budget to the department of education by January 1 for the next succeeding school year. The department of education shall review and approve or modify the program and proposed budget and shall notify the district by February 1. The district shall submit a claim by August 1 following the school year for the actual cost of the program. The department shall review and approve or modify the claim and shall notify the department of revenue and finance of the approved claim amount by September 1. The total amount of the approved claim shall be paid by the department of revenue and finance to the school district by October 1. The total amount paid by the department of revenue and finance shall be deducted monthly from the state foundation aid paid under section 257.16 to all school districts in the state during the subsequent fiscal year. The portion of the total amount of the approved claims that shall be deducted from the state aid of a school district shall be the same as the ratio that the budget enrollment for the budget year of the school district bears to the total budget enrollment in the state for the budget year in which the deduction is made. The department of revenue and finance shall transfer the total amount of the approved claims from moneys appropriated under section 257.16 for payment to the school district.

4. For purposes of this section, "*district of residence*" means the school district in which the parent or legal guardian of the child resides or the district in which the district court is located if the district court is the guardian of the child.

5. Programs may be provided during the summer and funded under this section if the school district or area education agency determines a valid educational reason to do so.

CHAPTER 285

STATE AID FOR TRANSPORTATION

285.1 When entitled to state aid.

1. The board of directors in every school district shall provide transportation, either directly or by reimbursement for transportation, for all resident pupils attending public school, kindergarten through twelfth grade, except that:

a. Elementary pupils shall be entitled to transportation only if they live more than two miles from the school designated for attendance.

b. High school pupils shall be entitled to transportation only if they live more than three miles from the school designated for attendance.

c. Children attending prekindergarten programs offered or sponsored by the district or nonpublic school and approved by the department of education or department of human services may be provided transportation services. However, transportation services provided nonpublic school children are not eligible for reimbursement under this chapter.

d. Districts are not required to maintain seating space on school buses for students who are otherwise to be provided transportation under this subsection if the students do not or will not regularly utilize the district's transportation service for extended periods during the school year. The student, or the student's parent or legal guardian if the student is less than eighteen years of age, shall be notified by the district before transportation services may be suspended, and the suspension may continue until the student, or the student's parent or legal guardian, notifies the district that regular student ridership will continue.

For the purposes of this subsection, high school means a school which commences with either grade nine or grade ten, as determined by the board of directors of the school district or by the governing authority of the nonpublic school in the case of nonpublic schools.

Boards in their discretion may provide transportation for some or all resident pupils attending public school or pupils who attend nonpublic schools who are not entitled to transportation. Boards in their discretion may collect from the parent or guardian of the pupil not more than the pro rata cost for such optional transportation, determined as provided in subsection 12.

2. Any pupil may be required to meet a school bus on the approved route a distance of not to exceed three-fourths of a mile without reimbursement.

3. In a district where transportation by school bus is impracticable, where necessary to implement a whole grade sharing agreement under section 282.10, or where school bus service is not available, the board may require parents or guardians to furnish transportation for their children to the schools designated for attendance. Except as provided in section 285.3, the parent or guardian shall be reimbursed for such transportation service for public and nonpublic school pupils by the board of the resident

district in an amount equal to eighty dollars plus seventy-five percent of the difference between eighty dollars and the previous school year's statewide average per pupil transportation cost, as determined by the department of education.

However, a parent or guardian shall not receive reimbursement for furnishing transportation for more than three family members who attend elementary school and one family member who attends high school.

4. In all districts where unsatisfactory roads or other conditions make it advisable, the board at its discretion may require the parents or guardians of public and nonpublic school pupils to furnish transportation for their children up to two miles to connect with vehicles of transportation. The parents or guardians shall be reimbursed for such transportation by the boards of the resident districts at the rate of twenty-eight cents per mile per day, one way, per family for the distance from the pupil's residence to the bus route.

5. Where transportation by school bus is impracticable or not available or other existing conditions warrant it, arrangements may be made for use of common carriers according to uniform standards established by the director of the department of education and at a cost based upon the actual cost of service and approved by the board.

6. When the school designated for attendance of pupils is engaged in the transportation of pupils, the sending or designating school shall use these facilities and pay the pro rata cost of transportation except that a district sending pupils to another school may make other arrangements when it can be shown that such arrangements will be more efficient and economical than to use facilities of the receiving school, providing such arrangements are approved by the board of the area education agency.

7. If a local board closes either elementary or high school facilities and is approved by the board of the area education agency to operate its own transportation equipment, the full cost of transportation shall be paid by the board for all pupils living beyond the statutory walking distance from the school designated for attendance.

8. Transportation service may be suspended upon any day or days, due to inclemency of the weather, conditions of roads, or the existence of other conditions, by the board of the school district operating the buses, when in their judgment it is deemed advisable and when the school or schools are closed to all children.

9. Distance to school or to a bus route shall in all cases be measured on the public highway only and over the most passable and safest route as determined by the area education agency board, starting in the roadway opposite the private entrance to the residence of the pupil and ending in the roadway

opposite the entrance to the school grounds or designated point on bus route.

10. The board in any district providing transportation for nonresident pupils shall collect the pro rata cost of transportation from the district of pupil's residence for all properly designated pupils so transported.

11. Boards in districts operating buses may transport nonresident pupils who attend public school, kindergarten through junior college, who are not entitled to free transportation provided they collect the pro rata cost of transportation from the parents.

12. The pro rata cost of transportation shall be based upon the actual cost for all the children transported in all school buses. It shall include one-seventh of the original net cost of the bus and other items as determined and approved by the director of the department of education but no part of the capital outlay cost for school buses and transportation equipment for which the school district is reimbursed from state funds or that portion of the cost of the operation of a school bus used in transporting pupils to and from extra-curricular activities shall be included in determining the pro rata cost. In a district where, because of unusual conditions, the cost of transportation is in excess of the actual operating cost of the bus route used to furnish transportation to nonresident pupils, the board of the local district may charge a cost equal to the cost of other schools supplying such service to that area, upon receiving approval of the director of the department of education.

13. When a local board fails to pay transportation costs due to another school for transportation service rendered, the board of the creditor corporation shall file a sworn statement with the area education agency board specifying the amount due. The agency board shall check such claim and if the claim is valid shall certify to the county auditor. The auditor shall transmit to the county treasurer an order directing the county treasurer to transfer the amount of such claim from the funds of the debtor corporation to the creditor corporation and the treasurer shall pay the same accordingly.

14. Resident pupils attending a nonpublic school located either within or without the school district of the pupil's residence shall be entitled to transportation on the same basis as provided for resident public school pupils under this section. The public school district providing transportation to a nonpublic school pupil shall determine the days on which bus service is provided, which shall be based upon the days for which bus service is provided to public school pupils, and the public school district shall determine bus schedules and routes. In the case of nonpublic school pupils the term "*school designated for attendance*" means the nonpublic school which is designated for attendance by the parents of the nonpublic school pupil.

15. If the nonpublic school designated for attendance is located within the public school district in which the pupil is a resident, the pupil shall be

transported to the nonpublic school designated for attendance as provided in this section.

16. *a.* If the nonpublic school designated for attendance of a pupil is located outside the boundary line of the school district of the pupil's residence, the pupil may be transported by the district of residence to a public school or other location within the district of the pupil's residence. A public school district in which a nonpublic school is located may establish school bus collection locations within its district from which nonresident nonpublic school pupils may be transported to and from a nonpublic school located in the district. If a pupil receives such transportation, the district of the pupil's residence shall be relieved of any requirement to provide transportation.

b. As an alternative to paragraph "*a*" of this subsection, subject to section 285.9, subsection 3, where practicable, and at the option of the public school district in which a nonpublic school pupil resides, the school district may transport a nonpublic school pupil to a nonpublic school located outside the boundary lines of the public school district if the nonpublic school is located in a school district contiguous to the school district which is transporting the nonpublic school pupils, or may contract with the contiguous public school district in which a nonpublic school is located for the contiguous school district to transport the nonpublic school pupils to the nonpublic school of attendance within the boundary lines of the contiguous school district.

c. If the nonpublic school designated for attendance of a pupil is located outside the boundary line of the school district of the pupil's residence and the district of residence meets the requirements of subsections 14 to 16 of this section by using subsection 17, paragraph "*c*", of this section and the district in which the nonpublic school is located is contiguous to the district of the pupil's residence and is willing to provide transportation under subsection 17, paragraph "*a*" or "*b*", of this section, the district in which the nonpublic school is located may provide transportation services, subject to section 285.9, subsection 3, and may make the claim for reimbursement under section 285.2. The district in which the nonpublic school is located shall notify the district of the pupil's residence that it is making the claim for reimbursement, and the district of the pupil's residence shall be relieved of the requirement for providing transportation and shall not make a claim for reimbursement for those nonpublic school pupils for which a claim is filed by the district in which the nonpublic school is located.

17. The public school district may meet the requirements of subsections 14 to 16 by any of the following:

a. Transportation in a school bus operated by a public school district.

b. Contracting with private parties as provided in section 285.5. However, contracts shall not provide payment in excess of the average per pupil transportation costs of the school district for that year.

c. Utilizing the transportation reimbursement provision of subsection 3.

d. Contracting with a contiguous public school district to transport resident nonpublic school pupils the entire distance from the nonpublic pupil's residence to the nonpublic school located in the contiguous public school district or from the boundary line of the public school district to the nonpublic school.

18. The director of the department of education may review all transportation arrangements to see that they meet all legal and established uniform standard requirements.

19. Transportation authorized by this chapter is exempt from all laws of this state regulating common carriers.

20. Transportation for which the pro rata cost or other charge is collected shall not be provided outside the state of Iowa except in accordance with rules adopted by the department of education in accordance with chapter 17A. The rules shall take into account any applicable federal requirements.

21. Boards in districts operating buses may in their discretion transport senior citizens, children, handicapped and other persons and groups, who are not otherwise entitled to free transportation, and shall collect the pro rata cost of transportation. Transportation under this subsection shall not be provided when the school bus is being used to transport pupils to or from school unless the board determines that such transportation is desirable and will not interfere with or delay the transportation of pupils.

22. Notwithstanding subsection 1, paragraph "a", a parent or guardian of an elementary pupil entitled to transportation pursuant to subsection 1, may request that a child day care facility be designated for purposes of subsection 9 rather than the residence of the pupil. The request shall be submitted for a period of time of at least one semester and may not be submitted more than twice during a school year.

95 Acts, ch 209, §15

Subsection 1, paragraph c amended

285.2 Payment of claims for nonpublic school pupil transportation.

Boards of directors of school districts shall be required to provide transportation services to nonpublic school pupils as provided in section 285.1 when the general assembly appropriates funds to the department of education for the payment of claims for transportation costs submitted by the school district.

There is appropriated from the general fund of the state to the department of education funds sufficient to pay the approved claims of public school districts for transportation services to nonpublic school pupils as provided in this section. The portion of the amount appropriated for approved claims under section 285.1, subsection 3, shall be determined under section 285.3.

The costs of providing transportation to nonpublic school pupils as provided in section 285.1 shall not be included in the computation of district cost under chapter 257, but shall be shown in the budget as an expense from miscellaneous income. Any transportation reimbursements received by a local school district for transporting nonpublic school pupils shall not affect district cost limitations of chapter 257. The reimbursements provided in this section are miscellaneous income as defined in section 257.2.

Claims for reimbursement shall be made to the department of education by the public school district providing transportation or transportation reimbursement during a school year on a form prescribed by the department, and the claim shall state the services provided and the actual costs incurred. A claim shall not exceed the average transportation costs of the district per pupil transported except as otherwise provided. If transportation is provided under section 285.1, subsection 3, the amount of a claim shall be determined under section 285.3 regardless of the average transportation costs of the district per pupil transported.

Claims shall be accompanied by an affidavit of an officer of the public school district affirming the accuracy of the claim. By February 1 and on or about June 15 of each year, the department shall certify to the department of revenue and finance the amounts of approved claims to be paid, and the department of revenue and finance shall draw warrants payable to school districts which have established claims. Claims shall be allowed where practical, and at the option of the public school district of the pupil's residence, subject to approval by the area education agency of the pupil's residence, under section 285.9, subsection 3, the public school district of the pupil's residence may transport a pupil to a school located in a contiguous public school district outside the boundary lines of the public school district of the pupil's residence. The public school district of the pupil's residence may contract with the contiguous public school district or with a private contractor under section 285.5 to transport the pupils to the school of attendance within the boundary lines of the contiguous public school district. The public school district in which the pupil resides may contract with the contiguous public school district or with a private contractor under section 285.5 to transport the pupil from the pupil's residence or from designated school bus collection locations to the school located within the boundary lines of the contiguous public school district, subject to the approval of the area education agency of the pupil's residence. The public school district of the pupil's residence may utilize the reimbursement provisions of section 285.1, subsection 3.

94 Acts, ch 1181, §14, 18; 95 Acts, ch 214, §10, 11

1994 amendment to unnumbered paragraph 5 is effective July 1, 1995;

94 Acts, ch 1181, §18; 95 Acts, ch 214, §10, 11

Unnumbered paragraph 5 amended

CHAPTER 291

PRESIDENT, SECRETARY, AND TREASURER OF BOARD

291.13 General and schoolhouse funds. Repealed by 94 Acts, ch 1029, § 32, effective July 1, 1995. See chapter 298A.

CHAPTER 294

TEACHERS

294.10A Pickup of teacher assessments.

1. Notwithstanding section 294.9 or other provisions of this chapter, beginning January 1 following the submission by a board of trustees of an application to the federal internal revenue service requesting qualification of a plan in accordance with the requirements of the Internal Revenue Code, as defined in section 422.3, teacher assessments required under section 294.9 which are picked up by an employing school district shall be considered employer contributions for federal income tax purposes, and each employing school district establishing a pension and annuity retirement system pursuant to this chapter shall pick up the teacher assessments to be made under section 294.9 by its employees commencing the January 1 following an application for qualification. Each employing school district shall pick up

these teacher assessments by reducing the salary of each of the teachers covered by this chapter by the amount which each teacher is required to contribute through assessments under section 294.9 and shall pay to the board of trustees the amount picked up in lieu of the teacher assessments for recording and deposit in the fund.

2. Teacher assessments picked up by each employing school district under subsection 1 shall be treated as employer contributions for federal income tax purposes only and for all other purposes of this chapter and the laws of this state shall be treated as teacher assessments and deemed part of the teacher's wages or salary.

95 Acts, ch 67, §22
Subsection 1 amended

CHAPTER 294A

EDUCATIONAL EXCELLENCE PROGRAM — TEACHERS

294A.2 Definitions.

For the purposes of this chapter:

1. "*Certified enrollment in a school district*" for the school years beginning July 1, 1987, July 1, 1988, and July 1, 1989, means that district's basic enrollment for the budget year beginning July 1, 1987, as defined in section 442.4, Code 1989. For each school year thereafter, certified enrollment in a school district means that district's basic enrollment for the budget year as defined in section 442.4, Code 1989, or section 257.2.

2. "*Enrollment served*" for the fiscal years beginning July 1, 1987, July 1, 1988, and July 1, 1989, means that area education agency's enrollment served for the budget year beginning July 1, 1987. For each school year thereafter, enrollment served means that area education agency's enrollment served for the budget year. Enrollment served shall be determined under section 257.37.*

3. "*General training requirements*" means requirements prescribed by a board of directors that provide for the acquisition of additional semester

hours of graduate credit from an institution of higher education approved by the state board of education or the completion of staff development activities licensed by the board of educational examiners, except for programs developed by practitioner preparation institutions and area education agencies, for renewal of licenses issued under chapter 272.

4. "*Specialized training requirements*" means requirements prescribed by a board of directors to meet specific needs of the school district identified by the board of directors that provide for the acquisition of clearly defined skills through formal or informal education that are beyond the requirements necessary for initial licensing under chapter 272.

5. "*Teacher*" means an individual holding a practitioner's license issued under chapter 272, or a letter of authorization or statement of professional recognition issued by the board of educational examiners, who is employed in a nonadministrative position by a school district or area education agency pursuant to a contract issued by a board of directors under section 279.13. A teacher may be employed in both an ad-

ministrative and a nonadministrative position by a board of directors and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position.

"Teacher" includes a licensed individual employed on less than a full-time basis by a school district through a contract between the school district and an institution of higher education with a practitioner preparation program in which the licensed teacher is enrolled in any practitioner preparation program.

6. "Teacher's regular compensation" means the annual salary specified in a teacher's contract pursuant to the salary schedule adopted by the board of directors or negotiated under chapter 20. It does not include pay earned by a teacher for performance of additional noninstructional duties and does not include the costs of the employer's share of fringe benefits.

95 Acts, ch 4, §1

*The original reference to §257.37 was invalid because of an item veto by the governor, but a similar provision was subsequently enacted using the same number; 89 Acts, ch 135, §37; 91 Acts, ch 6, §2

1995 amendments to subsection 5 are retroactive to July 1, 1994; 95 Acts, ch 4, §2

Subsection 5 amended

294A.25 Appropriation.

1. For the fiscal year beginning July 1, 1990, there is appropriated from the general fund of the state to the department of education the amount of ninety-two million one hundred thousand eighty-five dollars to be used to improve teacher salaries. For each fiscal year in the fiscal period commencing July 1, 1991, and ending June 30, 1993, there is appropriated an amount equal to the amount appropriated for the fiscal year beginning July 1, 1990, plus an amount sufficient to pay the costs of the additional funding provided for school districts and area education agencies under sections 294A.9 and 294A.14. For each fiscal year beginning on or after July 1, 1995, there is appropriated the sum which was appropriated for the previous fiscal year, including supplemental payments. The moneys shall be distributed as provided in this section.

2. The amount of one hundred fifteen thousand five hundred dollars to be paid to the department of human services for distribution to its licensed classroom teachers at institutions under the control of the department of human services for payments for phase II based upon the average student yearly enrollment at each institution as determined by the department of human services.

3. The amount of ninety-four thousand six hundred dollars to be paid to the state board of regents for distribution to licensed classroom teachers at the Iowa braille and sight saving school and the Iowa school for the deaf for payments of minimum salary supplements for phase I and payments for phase II based upon the average yearly enrollment at each school as determined by the state board of regents.

4. Commencing with the fiscal year beginning July 1, 1988, the amount of one hundred thousand dollars to be paid to the department of education for distribution to the tribal council of the Sac and Fox Indian settlement located on land held in trust by the secretary of the interior of the United States. Moneys allocated under this subsection shall be used for the purposes specified in section 256.30.

5. Commencing with the fiscal year beginning July 1, 1990, the amount of sixty thousand dollars for the ambassador to education program under section 256.43.

5A. Reserved.

6. For the fiscal year beginning July 1, 1990, and succeeding fiscal years, the remainder of moneys appropriated in subsection 1 to the department of education shall be deposited in the educational excellence fund to be allocated in an amount to meet the minimum salary requirements of this chapter for phase I, in an amount to meet the requirements for phase II, and the remainder of the appropriation for phase III.

7. Commencing with the fiscal year beginning July 1, 1993, the amount of fifty thousand dollars for geography alliance, seventy thousand dollars for gifted and talented, and one hundred eighty thousand dollars for a management information system from additional funds transferred from phase I to phase III.

8. For the fiscal year beginning July 1, 1995, to the department of education from phase III moneys the amount of one million two hundred fifty thousand dollars for support for the operations of the new Iowa schools development corporation and for school transformation design and implementation projects administered by the corporation. Of the amount provided in this subsection, one hundred fifty thousand dollars shall be used for the school and community planning initiative.

95 Acts, ch 209, §2; 95 Acts, ch 218, §29

Additional appropriation for subsection 1; 95 Acts, ch 209, §1
Subsections 1 and 8 amended

CHAPTER 296

INDEBTEDNESS OF SCHOOL CORPORATIONS

296.2 Petition for election.

Before indebtedness can be contracted in excess of one and one-quarter percent of the assessed value of

the taxable property, a petition signed by eligible electors equal in number to twenty-five percent of those voting at the last election of school officials

shall be filed with the president of the board of directors, asking that an election be called, stating the amount of bonds proposed to be issued and the purpose or purposes for which the indebtedness is to be created, and that the purpose or purposes cannot be accomplished within the limit of one and one-

quarter percent of the valuation. The petition may request the calling of an election on one or more propositions and a proposition may include one or more purposes.

95 Acts, ch 189, §20
Section amended

CHAPTER 298

SCHOOL TAXES AND BONDS

298.9 Special levies.

If the voter-approved physical plant and equipment levy, consisting solely of a physical plant and equipment property tax levy, is voted at a special election and certified to the board of supervisors after the regular levy is made, the board shall at its next regular meeting levy the tax and cause it to be entered upon the tax list to be collected as other,

school taxes. If the certification is filed prior to April 1, the annual levy shall begin with the tax levy of the year of filing. If the certification is filed after April 1 in a year, the levy shall begin with the levy of the fiscal year succeeding the year of the filing of the certification.

95 Acts, ch 67, §23
Section amended

CHAPTER 298A

SCHOOL DISTRICT FUND STRUCTURE

298A.11 School nutrition fund.

A school nutrition fund is an enterprise fund. A school nutrition fund must be established in any school corporation receiving moneys from the school

meal program authorized under chapter 283A.

95 Acts, ch 67, §24
Section amended

CHAPTER 299

COMPULSORY EDUCATION

Truancy pilot initiative in fifth judicial district; appropriation;
95 Acts, ch 205, §10

CHAPTER 300

EDUCATIONAL AND RECREATIONAL TAX

300.2 Tax levy.

The board of directors of a school district may, and upon receipt of a petition signed by eligible electors equal in number to at least twenty-five percent of the number of voters at the last preceding school election, shall, direct the county commissioner of elections to submit to the registered voters of the school district the question of whether to levy a tax of not to exceed thirteen and one-half cents per thousand dollars of assessed valuation for public educational and recreational activities authorized under this chapter. If at

the time of filing the petition, it is more than three months until the next regular school election, the board of directors shall submit the question at a special election within sixty days. Otherwise, the question shall be submitted at the next regular school election.

If a majority of the votes cast upon the proposition is in favor of the proposition, the board shall certify the amount required for a fiscal year to the county board of supervisors by April 15 of the preceding fiscal year. The board of supervisors shall levy the

amount certified. The amount shall be placed in the public education and recreation levy fund of the district and shall be used only for the purposes specified in this chapter.

The proposition to levy the public recreation and playground tax is not affected by a change in the boundaries of a school district, except as otherwise provided in this section. If each district involved in school reorganization under chapter 275 has adopted the public recreation and playground tax, and if the

voters have not voted upon the proposition to levy the public recreation and playground tax in the reorganized district, the existing public recreation and playground tax shall be in effect for the reorganized district for the least amount that has been approved in any of the districts and until discontinued pursuant to section 300.3.

95 Acts, ch 67, §53
Terminology change applied

CHAPTER 303

DEPARTMENT OF CULTURAL AFFAIRS

303.12 Archives.

"Archives" means documents, books, papers, photographs, sound recordings, electronic records, or similar material produced or received pursuant to law in connection with official government business, which no longer have administrative, legal, or fiscal value to the office having present custody of them, and which have been appraised by the state archivist as having sufficient historical, research, or informational value to warrant permanent preservation. The state archivist is the custodian of archives which have been transferred and delivered to the state archives of Iowa. County, municipal, and local government archives are not included in the state archives of Iowa unless they are voluntarily transferred to the custody of the state archivist with the written consent of the state archivist and are physically delivered to the state archives of Iowa. The state archivist shall prescribe rules for the systematic arrangement of archives as to the proper labeling to indicate the contents and order of filing and the archives must be labeled before the archives may be transferred to the state archivist's custody.

95 Acts, ch 29, §1
Section amended

303.13 Transfer of archives.

The state executive and administrative departments, officers or offices, councils, boards, bureaus, and commissions shall deliver to the state archives of Iowa and transfer to the custody of the state archivist all archives as defined in section 303.12, in accordance with the retention schedules in the records management manual. Before transferring and delivering archives, the office of present custody shall file with the state archivist a classified list of the archives being transferred in detail as the state archivist prescribes. If the state archivist, on receipt of the list, and after consultation with the chief executive of the office filing the classified list or with a representative designated by the executive, finds that, according to the records management manual, certain classifications of the records listed are not of sufficient historical, legal, or informational value to justify perma-

nent preservation, the state archivist shall not accept or retain the material in the state archives.

95 Acts, ch 29, §2
Section amended

303.15 Certified copies — fees.

Upon request of a person, the state archivist shall make a certified copy of any document, manuscript, or record contained in the archives or in the custody of the state archivist unless reproduction is inappropriate because of legal, curatorial, or physical considerations. If a copy is properly authenticated it has the same legal effect as though certified by the officer from whose office it was obtained or by the secretary of state. The copy may be made in writing, or by a suitable photographic process. The state archivist shall charge and collect for copies the fees allowed by law to the official in whose office the document originates for certified copies. The state archivist shall charge a person requesting a search of census records for the purpose of determining genealogy the actual cost of performing the search.

95 Acts, ch 29, §3
Section amended

303.18 Loan for exhibits.

Notwithstanding sections 257B.1 and 257B.1A, and after moneys appropriated under section 99E.32, subsection 5, Code 1993, for the fiscal year beginning July 1, 1987, and ending June 30, 1988, have been expended or obligated, the administrator of the historical division of the department of cultural affairs may obtain a loan of not exceeding three million fifty thousand dollars from moneys designated as the permanent school fund of the state in section 257B.1, to be used to pay for equipment, planning, and construction costs of educational exhibits for the state historical museum. The exhibits will teach common school children of Iowa about Iowa's history, culture, and heritage. The department of revenue and finance shall make the payment upon receipt of a written request from the administrator of the historical division. Moneys received under this section as a loan that are not expended are available for expenditure during the fiscal year beginning July 1, 1988.

The historical division shall repay the amount of the loan together with annual interest payments due on the balance of the loan over a ten-year period commencing with the fiscal year beginning July 1, 1987. Payments shall be made from gross receipts and other moneys available to the historical division. The historical division shall solicit voluntary contributions on behalf of the historical division, at the entrance and other locations throughout the state historical building for purposes of raising funds for making payments under this section. Payments of both principal and interest made by the state historical division under this section shall be paid quarterly and shall be considered interest earned on the permanent school fund to the extent necessary for payment of interest to the first in the nation in education foundation under section 257B.1A.

The treasurer of state shall determine the rate of interest that the historical division shall pay on the loan.

94 Acts, ch 1181, §15, 18; 95 Acts, ch 214, §10, 11
1994 amendment to unnumbered paragraph 2 is effective July 1, 1995;
94 Acts, ch 1181, §18; 95 Acts, ch 214, §10, 11
Unnumbered paragraph 2 amended

303.20 Definitions.

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

1. "*Area of historical significance*" means contiguous pieces of property of no greater area than one hundred sixty acres under diverse ownership which:
 - a. Are significant in American history, architecture, archaeology and culture, and
 - b. Possess integrity of location, design, setting, materials, skill, feeling and association, and
 - c. Are associated with events that have been a significant contribution to the broad patterns of our history, or
 - d. Are associated with the lives of persons significant in our past, or
 - e. Embody the distinctive characteristics of a type; period; method of construction; represent the work of a master; possess high artistic values; rep-

resent a significant and distinguishable entity whose components may lack individual distinction.

f. Have yielded, or may be likely to yield, information important in prehistory or history.

2. "*Commission*" is the five-person body, elected by the registered voters in the historical preservation district from persons living in the district for the purpose of administering this subchapter of this chapter.

3. "*District*" means a historical preservation district established under this subchapter of this chapter.

4. "*Department*" means the department of cultural affairs.

5. "*Exterior features*" means the architectural style, general design and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material and the type and style of all windows, doors, light fixtures, signs and other appurtenant fixtures. In the case of an outdoor advertising sign, "*exterior features*" means the style, material, size and location of the sign.

6. "*Property owner*" means an individual or corporation who is the owner of real estate for taxation purposes.

95 Acts, ch 67, §53
Terminology change applied

303.33 Termination of district.

Two years after the establishment of a district, a referendum for the termination of the district shall be held if ten percent of the eligible voters in the district so request. If the registered voters, by a majority of those voting, favor termination, this Act* will no longer have any effect on the property formerly included in the district.

If an election is held to terminate a district under this section and such attempt fails, another referendum for termination of the district in question shall not take place for a period of two years.

95 Acts, ch 67, §53
*See 76 Acts, ch 1159, §14
Terminology change applied

CHAPTER 303C

ARTS AND CULTURAL ENHANCEMENT AND ENDOWMENT

303C.1 Definitions.

For the purposes of this chapter, the following definitions apply:

1. "*Arts*" means music, dance, theater, opera and music theater, visual arts, literature, design arts, media arts, and folk and traditional arts.
2. "*Culture*" or "*cultural*" means programs and activities which explore past and present human experience.
3. "*Department*" means the department of cultural affairs.
4. "*Endowment account*" means the arts and cultural endowment account established in section

303C.2, which consists of funds received from private sources, and which may include funds appropriated by the general assembly.

5. "*Endowment program*" means the arts and cultural endowment program established in section 303C.7.

6. "*Enhancement account*" means the arts and cultural enhancement account established in section 303C.2, which consists, upon the making of an appropriation by the general assembly, of public funds.

7. "*Enhancement program*" means the arts and cultural enhancement program created in section 303C.3.

8. "Foundation" means the arts and cultural endowment foundation established in section 303C.8.

Section not amended
Internal reference in subsection 8 editorially corrected

303C.2 Iowa arts and cultural enhancement and endowment accounts established.

The Iowa arts and cultural enhancement account and the Iowa arts and cultural endowment account are established in the office of the treasurer of state. The moneys deposited in each account shall be invested by the treasurer of state in investments authorized for the Iowa public employees' retirement fund in section 97B.7. Interest earned on each account shall be transferred to the credit of that account. The provisions of section 8.33 do not apply to the accounts.

1. *Enhancement account.* The enhancement account shall be administered by the arts division of the department for purposes of the enhancement program described in section 303C.3.

Upon the making of an appropriation by the general assembly for deposit in the enhancement account, funds in the enhancement account shall be used as follows: eighty percent shall be available for distribution on a matching basis to nonprofit organizations pursuant to section 303C.4; fifteen percent shall be available for distribution as block grants to qualified organizations pursuant to section 303C.5; and five percent shall be available to the arts division for the administration of the regional conferences and the statewide caucus on arts and cultural enhancement pursuant to section 303C.6 and for the administration of the enhancement program.

2. *Endowment account.* The endowment account shall be administered by the endowment foundation established in section 303C.8, for purposes of the endowment program established in section 303C.7.

Beginning in 1993, the endowment foundation shall, annually, on July 1, certify to the department of management and the legislative fiscal bureau, the amount of funds received from private sources for use in the endowment program. The general assembly may appropriate funds to the endowment account. However, the use of funds in the endowment account described in this subsection is not contingent upon the making of an appropriation by the general assembly.

Only the interest on the funds in the endowment account is available for use for the endowment program, and shall be allocated as follows: ninety-five percent for distribution for grants, fellowships, and scholarships to nonprofessional, professional, and student artists pursuant to section 303C.7; and five percent to the endowment foundation established in section 303C.8, for the administration of the endowment program.

Section not amended
Internal references in subsection 2 editorially corrected

303C.4 Matching funds provided to nonprofit organizations.

Enhancement account funds shall be available, upon certification by the department that the appli-

cant has secured nonstate matching funds at least equal to the amount of the grant award. The department shall consider the recommendations of the caucus on arts and cultural enhancement made pursuant to section 303C.6, and the recommendations of the advisory council created in section 303C.5A, and shall adopt rules pursuant to chapter 17A governing the distribution of funds to organizations. Proposed programs shall do at least one of the following:

1. *Education.* Provide for the development or expansion of essential nonrevenue producing arts or cultural educational programs which would supplement an existing curriculum.

2. *Outreach.* Provide for one or more of the following:

a. *Rural access.* Allow cultural resources to be available to small communities which lack arts and cultural resources.

b. *Social awareness.* Assist in programs enabling arts organizations to participate in and encourage a healthy community environment.

c. *Cultural diversity.* Increase the awareness and acceptance of cultural diversity through arts and culture.

d. *Serving special populations.* Provide programs and innovative projects for the following, including but not limited to: at-risk youth, talented and gifted persons, underserved persons, disabled persons, senior citizens, or other special needs persons.

3. *Enhancement.* Provide for one or more of the following:

a. *Program enhancement.* Allow arts and cultural organizations to improve or enhance the quality of programs currently offered.

b. *Artist and arts educators enhancement.* Fund projects which would increase and support professional and student artists, and arts educators.

95 Acts, ch 173, §2
Unnumbered paragraph 1 amended

303C.5 Block grants.

Enhancement account funds shall be available for the purposes of enhancing the quality of local arts and cultural programs. The department shall adopt rules pursuant to chapter 17A governing the eligibility for, and the distribution of, block grants. The rules adopted shall include, but are not limited to, requirements that eligible organizations have adequate by-laws, mission statements, representational board structure, and publicly accessible arts programming.

95 Acts, ch 173, §3
Section amended

303C.5A Advisory council.

1. An advisory council is established to advise the department regarding the awarding of funds pursuant to section 303C.4. The advisory council shall consist of seven members selected as follows:

a. The person elected as chairperson of the statewide cultural caucus pursuant to section 303C.6, subsection 2.

b. The chairperson of the Iowa humanities board.

c. The chairperson of the Iowa arts council.

d. Four members appointed by the director of the department of cultural affairs, two of whom shall be representatives of statewide arts organizations.

2. The majority shall not include any member who has a conflict of interest and a statement by a member of a conflict of interest shall be conclusive for this purpose.

3. The term of office for the member selected pursuant to subsection 1, paragraph "a", is one year. The term of office for members selected pursuant to subsection 1, paragraphs "b" through "d", is three years. Terms shall be staggered and shall commence and end as provided in section 69.19. A vacancy shall be filled by the original appointing authority.

4. The advisory council shall be bipartisan and gender balanced in accordance with sections 69.16 and 69.16A.

95 Acts, ch 173, §4

Transition provisions; initial appointments and staggering of terms; 95 Acts, ch 173, §10
NEW section

303C.6 Regional conferences and statewide caucus on arts and cultural enhancement.

1. The department shall administer the regional conferences and statewide caucus on arts and cultural enhancement. The purpose of the conferences and caucus is to guide the development of the arts and cultural enhancement program by identifying opportunities for programs regarding education, outreach, and enhancement, by reviewing any recommended changes in enhancement program policies, programs, and funding, and by making recommendations to the department regarding distribution of matching funds to nonprofit organizations pursuant to section 303C.4.

2. Biennially, in the month of June during odd-numbered years, the department shall convene a statewide caucus on arts and cultural enhancement.

a. Prior to the statewide caucus, the department shall make arrangements to hold a conference in each of six regions of the state as defined by the Iowa arts council. The department shall promote attendance of interested persons at each conference. A designee of the department shall call each conference to order and serve as temporary chairperson until persons attending elect a chairperson. The department shall provide persons attending with current information regarding cultural enhancement programs and expenditures. Persons attending shall identify opportunities for programs in the areas of education, outreach, and enhancement and review recommended changes in enhancement account policies, programs, and funding, and make recommendations in the form of a resolution. The persons attending the conference shall elect six persons from among the attendees to serve as regional, voting delegates to the statewide caucus. The conference attendees shall elect a chairperson from among the six representatives. The selection of persons at each conference to serve as regional, voting delegates to the statewide caucus shall conform to the gender balance require-

ments of section 69.16A. Other interested persons may attend the statewide caucus as nonvoting attendees.

b. A designee of the department shall call the caucus to order and serve as temporary chairperson until persons attending the caucus elect a chairperson. Persons attending the caucus shall discuss the recommendations of the regional conferences and decide upon recommendations to be made to the department. Elected chairpersons of the regional conferences shall meet with representatives of the department and present the recommendations of the caucus.

95 Acts, ch 173, §5-7

Subsection 2, unnumbered paragraph 1 amended

Subsection 2, paragraph a amended

Subsection 3 stricken

303C.7 Arts and cultural endowment program established.

The arts and cultural endowment program is established. The program shall be administered by the arts and cultural endowment foundation governing board established in section 303C.8, which shall adopt rules pursuant to chapter 17A to fulfill the purposes of this section. Interest on the funds in the endowment account established in section 303C.2, subsection 2, is available for the purposes of this section. The endowment foundation shall establish criteria for the awarding of grants, fellowships, and scholarships to nonprofessional, professional, and student artists to develop, encourage, and enhance the arts and cultural programs in the state, upon submission of a proposal by the artist. An artist shall request no more than twenty-five thousand dollars in a proposal.

95 Acts, ch 173, §8

Section stricken and rewritten

303C.8 Arts and cultural endowment foundation — governing board — established.

1. The arts and cultural endowment foundation is established and shall be administered by a governing board consisting of seven members, three of whom shall be appointed by the Iowa humanities board and four of whom shall be appointed by the director of the department. Members shall be knowledgeable about education, arts, the humanities, and fund-raising activities in this state. A vacancy shall be filled by the original appointing authority. Members shall serve three-year staggered terms which shall commence and end as provided in section 69.19. The governing board shall be bipartisan and gender balanced in accordance with sections 69.16 and 69.16A.

2. The Iowa arts council shall provide administrative services for the arts and cultural endowment foundation and shall advise and assist the governing board. The exercise of the powers granted to the endowment foundation in this chapter is an essential governmental function. The endowment foundation shall be located in the department's offices.

3. The endowment foundation may solicit and accept gifts, grants, donations, bequests, and in-kind contributions for deposit in the endowment account. The endowment foundation shall, to the extent possible, use gifts, donations, and bequests in accordance

with the expressed desires of the person making the gift, donation, or bequest.

95 Acts, ch 173, §9

Initial appointments to governing board and staggering of terms; 95 Acts, ch 173, §11

NEW section

CHAPTER 306

ESTABLISHMENT, ALTERATION, AND VACATION OF HIGHWAYS

306.6 Functional classification board.

1. A functional classification board shall be appointed for each county and shall operate under procedural rules promulgated by the department under the provisions of chapter 17A. Said board shall consist of three members to be appointed as follows: The department shall appoint one member from the staff of the department, the county board of supervisors shall appoint one member who shall be either the county engineer or one of its own members, and the third member shall be a municipal official from within the county who shall be appointed by a majority of the mayors of the cities of the county. The mayors shall meet at the call of the chairperson of the county board of supervisors who shall act as chairperson of the meeting without vote. In the event the mayors cannot agree to and appoint this member within thirty days after the call of the meeting by the chairperson, the two members previously appointed shall select the third member. The board shall serve without additional compensation and shall:

a. Classify each segment of each rural public road and each municipal street in the county in accordance with the classifications found in section 306.1.

b. Establish continuity between the systems within the county and with the systems of adjacent counties.

c. File a copy of the proposed road classification in the office of county engineer for public information and hold a public hearing before final approval of a road classification action. Notice of the date, the time, and the place of the hearing, and the filing of the proposed road classification for public information shall be published in an official newspaper in general circulation throughout the affected area as provided in section 331.305.

d. Report the selected classifications to the department. The department shall review the reports of the county classification boards and may:

(1) Alter the classification of roads coinciding with or crossing county lines to provide continuity of the various county systems.

(2) Adjust the mileage of roads classified in the trunk and trunk collector systems to assure equitable distribution among the counties of the total mileage of such systems.

(3) Any action authorized under subparagraphs (1) and (2) of this paragraph "d" shall not be taken by the department until the proposed action has been

thoroughly discussed with the affected county classification boards and their comments heard.

2. A state functional classification review board is created, consisting of one state senator appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, one state representative appointed by the speaker of the house of representatives, one supervisor appointed by the Iowa state association of county supervisors, one engineer appointed by the Iowa county engineers' association, two persons appointed by the Iowa league of cities, one of whom shall be a licensed professional engineer, and two persons appointed by the department, one of whom shall be a commissioner and the other a staff member. This board shall select a permanent chairperson from among its members by majority vote of the total membership. Except as otherwise provided, the members of the board shall serve without additional compensation to the salary and expenses authorized for the office or position held by the member. The supervisor appointed by the Iowa state association of county supervisors, the engineer appointed by the Iowa county engineers' association, and the two persons appointed by the Iowa league of cities shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the board from funds allocated under section 312.2, subsection 10. The legislative members shall be paid for their actual and necessary expenses and, when the general assembly is not in session, per diem as provided in sections 2.10 and 2.12. The department's members of the board shall be reimbursed for their actual and necessary expenses from the funds appropriated pursuant to section 313.5.

It shall be the responsibility of the state functional classification review board to hear any and all appeals from classification boards or board members, relative to disputes arising out of the functional classification of any segment of highway or street. It shall also be the responsibility of the board to establish the necessary guidelines, procedures, and the time limits to be followed in transferring jurisdiction in accordance with section 306.8. The state functional classification review board shall have the authority and the responsibility to make final administrative determinations based on sound functional classification principles for all disputes relative to functional classification including those disputes

relative to the transfer of jurisdictions. The review board shall also serve, when requested jointly by state and local jurisdictions, as an advisory committee for review and adjustment of construction and maintenance guidelines used in updating road and street needs studies.

It is the intent of the general assembly that effective July 1, 1979 the functional reclassification of roads shall be implemented as provided by law.

95 Acts, ch 3, §1

Subsection 2, unnumbered paragraph 1 amended

306.12 Notice — service.

Notice of the hearing under section 306.11 shall be published in a newspaper of general circulation in the county or counties where the road is located, not less than four nor more than twenty days prior to the date of hearing. The agency which is holding the hearing shall notify all adjoining property owners, all utility companies whose facilities adjoin the road right-of-way or are on the road right-of-way, and the department, boards of supervisors, or agency in control of affected state lands, of the time and place of the hearing, by certified mail, and shall notify all property owners located outside the boundary of a city, who own ten or more acres of land within one mile of the road, by regular mail.

95 Acts, ch 54, §1

Section amended

306.19 Right-of-way — access — notice.

1. In the maintenance, relocation, establishment, or improvement of any road, including the extension of such road within cities, the agency having jurisdiction and control of such road shall have authority to purchase or to institute and maintain proceedings for the condemnation of the necessary right-of-way therefor. Such agency shall likewise have power to purchase or institute and maintain proceedings for the condemnation of land necessary for highway drainage, or land containing gravel or other suitable material for the improvement or maintenance of highways, together with the necessary road access or right of access thereto.

2. Whenever the agency condemns or purchases property access rights or alters by lengthening any existing driveway to a road from abutting property, except during the time required for construction and maintenance of the road or highway, the agency shall:

a. Compensate the owner for any diminution in the market value of the property by the denial or alteration by lengthening the driveway; however, in computing such diminution in value no consideration shall be given to the additional maintenance expense for maintaining the additional length of driveway, but in lieu thereof, both in condemnation proceedings or negotiated purchases, the agency shall pay to the owner the sum of five dollars for every lineal foot of additional length of driveway located on said owner's property. This payment shall represent just compensation to said property owner for the additional driveway maintenance caused by reason of the highway or road project.

b. If in the opinion of the agency it would be more economical to purchase the entire tract of the property owner than to provide and pay the maintenance expense required under the provisions of this section, proceed with the acquisition of the entire tract of land; or

c. If mutually agreeable, move buildings from an existing location to a location requiring an equal or lesser length of driveway and provide an adequate driveway to a public road.

3. None of the foregoing requirements shall prohibit the property owner and the agency from entering into a mutually acceptable agreement for the replacement, relocation, construction, or maintenance of any alternate driveway on the owner's property.

4. Compensation for any property rights taken in the establishment of any alternative temporary or permanent access shall be paid as in any other purchase or condemnation of property. Proceedings for the condemnation of land for any highway shall be under the provisions of chapter 6A and chapter 6B. Provided that, in the condemnation of right-of-way for secondary roads, the board of supervisors may proceed as provided in sections 306.28 to 306.37.

5. a. The department may notify a city or county that a road under the jurisdiction or control of the department will be established, improved, relocated, or maintained and that the department may need to acquire additional right-of-way or property rights within an area described by the department. The notice shall include a depiction of the area on a map provided by the city, county, or the department. This notice shall be valid for a period of three years from the date of notification to the city or county and may be refiled by the department every three years. Within seven days of filing the notice, the department shall publish in a newspaper of public record a description and map of the area and a description of the potential restrictions applied to the city or county with respect to the granting of building permits, approving of subdivision plats, or zoning changes within the area.

b. The city or county shall notify the department of an application for a building permit for construction valued at twenty-five thousand dollars or more, of the submission of a subdivision plat, or of a proposed zoning change within the area at least thirty days prior to granting the proposed building permit, approving the subdivision plat, or changing the zoning.

c. If the department, within the thirty-day period, notifies the city or county that the department is proceeding to acquire all or part of the property or property rights affecting the area, the city or county shall not issue the building permit, approve the subdivision plat, or change the zoning. The department may apply to the city or county for an extension of the thirty-day period. After a public hearing on the matter, the city or county may grant an additional sixty-day extension of the period.

d. The department shall begin the process of acquiring property or property rights from affected persons within ten days of the department's written notification of intent to the city or county.

6. If the agency determines that it is necessary to relocate an interstate hazardous liquid pipeline as defined by the federal Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. § 2001, et seq., the agency shall have the authority to institute and maintain proceedings on behalf of the pipeline company for the condemnation of replacement property rights. The replacement property rights shall be equal in substance to the pipeline company's existing rights, except that if the issue of width was not addressed, the replacement property rights shall be for a width and location deemed appropriate and necessary for the needs of the pipeline company, as determined by the agency. The replacement property rights of the pipeline company shall be subordinate to the rights of the agency only to the extent necessary for the construc-

tion and maintenance of the designated road. Within a reasonable time after completion of the pipeline replacement, all previously owned property rights of the pipeline company no longer required for operation and maintenance of the pipeline shall be released or conveyed to the appropriate parties. The authority of the agency under this subsection may only be exercised upon execution of a relocation agreement between the agency and the pipeline company.

7. For the purposes of this section, the term "driveway" shall mean a way of ingress and egress located entirely on private property, consisting of a lane or passageway leading from a residence to a public roadway or highway.

95 Acts, ch 135, §2

Subsection 5, paragraph a amended

CHAPTER 306A

CONTROLLED-ACCESS HIGHWAYS

306A.3 Authority to establish controlled-access facilities — utility accommodation policy.

Cities and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306, acting alone or in cooperation with each other or with any federal, state, or local agency or any other state having authority to participate in the construction and maintenance of highways, are authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use if traffic conditions, present or future, will justify special facilities; provided, that within a city such authority shall be subject to municipal consent as may be provided by law. In addition to the specific powers granted in this chapter, cities and highway authorities shall have any additional authority vested in them relative to highways or streets within their respective jurisdictions. Cities and highway authorities may regulate, restrict, or prohibit the use of controlled-access facilities by various classes of vehicles or traffic in a manner consistent with section 306A.2.

The department shall adopt rules, pursuant to chapter 17A, embodying a utility accommodation

policy which imposes reasonable restrictions on placements occurring on or after the effective date of the rules, on primary road rights-of-way. The rules may require utilities to give notice to the department prior to installation of a utility system on a primary road right-of-way and obtain prior permission from the department for the proposed installation. The rules shall recognize emergency situations and the need for immediate installation of service extensions subject to the standards adopted by the department and the utilities board. The rules shall be no less stringent than the standards adopted by the utilities board pursuant to chapters 478, 479, 479A, and 479B. This paragraph shall not be construed as granting the department authority which has been expressly granted to the utilities board to determine the route of utility installations. If the department requires a utility company permit, the department shall be required to act upon the permit application within thirty days of its filing. In cases of federal-aid highway projects on nonprimary highways, the local authority with jurisdiction over the highway and the department shall comply with all federal regulations and statutes regarding utility accommodation.

95 Acts, ch 192, §2

Section amended

CHAPTER 306C

JUNKYARD BEAUTIFICATION AND BILLBOARD CONTROL

306C.11 Advertising prohibited.

Subject to the provisions made in section 306C.13 regarding control of bonus interstate highways and section 306D.4 regarding scenic highways or byways, an advertising device shall not be erected or main-

tained within any adjacent area, or on the right-of-way of any primary highway, except the following:

1. Advertising devices concerning the sale or lease of property upon which they are located.
2. Advertising devices concerning activities con-

ducted on the property on which they are located, nor shall the property upon which they are located be construed to mean located upon any contiguous area having inconsistent use, size, shape, or ownership.

3. Advertising devices within the adjacent area located in commercial or industrial zones or in unzoned commercial or industrial areas in compliance with the regulatory standards of this division and rules promulgated by the department.

4. Official and directional signs and notices which shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historic attractions, recreational attractions and municipal recognition signs, which shall conform with rules promulgated by the department, provided that such rules shall be consistent with national standards promulgated pursuant to Title 23, section 131, subsection "c" of the United States Code.

5. Signs, displays, and devices giving specific information of interest to the traveling public, shall be erected by the department and maintained within the right-of-way in the areas, and at appropriate distances from interchanges on the interstate system and freeway primary highways as shall conform with the rules adopted by the department. The rules shall be consistent with national standards promulgated from time to time or as permitted by the appropriate authority of the federal government pursuant to 23 U.S.C. sec. 131(f) except as provided in this section. The rules shall include but are not limited to the following:

- a. Criteria for eligibility for signing.
- b. Criteria for limiting or excluding businesses that maintain advertising devices that do not conform to the requirements of chapter 306B, this division, or other statutes or administrative rules regulating outdoor advertising.
- c. Provisions for a fee schedule to cover the direct and indirect costs of sign erection and maintenance and related administrative costs.
- d. Provisions for specifying the maximum distance to eligible businesses.

e. Provisions specifying the maximum number of signs permitted per panel and per interchange.

f. Provisions for determining what businesses are signed when there are more applicants than the maximum number of signs permitted.

g. Provisions for removing signs when businesses cease to meet minimum requirements for participation and related costs.

For purposes of this division, "*specific information of interest to the traveling public*" means only information about public places for camping, lodging, eating, and motor fuel and associated services, including trade names which have telephone facilities available when the public place is open for business and businesses engaged in selling motor vehicle fuel which have free air for tire inflation and restroom facilities available when the public place is open for business.

Business signs supplied to the department by commercial vendors shall be on panels, with dimensional and material specifications established by the department. A business sign included under the provisions of this section shall not be posted unless it is in compliance with these specifications. The commercial vendor shall pay to the department a fee based upon the schedule adopted under this subsection for each business sign supplied for posting. Upon furnishing the business signs to the department and payment of all fees, the department shall post the business signs on eligible specific information panels. Faded signs shall be replaced and the commercial vendor charged for the cost of replacement based upon the fee schedule adopted. There is created in the office of the treasurer of state a fund to be known as the "*highway beautification fund*" and all funds received for the posting on specific information panels shall be deposited in the "*highway beautification fund*". Information on motor fuel and associated services may include vehicle service and repair where the same is available.

95 Acts, ch 135, §3

Unnumbered paragraph 1 amended

CHAPTER 306D

SCENIC ROUTES

306D.4 Scenic highway advertising.

The state department of transportation shall have the authority to adopt rules to control the erection of new advertising devices on a highway designated as a scenic highway or scenic byway in order to comply

with federal requirements concerning the implementation of a scenic byways program.

95 Acts, ch 135, §4

NEW section

CHAPTER 307

DEPARTMENT OF TRANSPORTATION (DOT)

307.21 Administrative services.

The department's administrator of administrative services shall:

1. Provide for the proper maintenance and protection of the grounds, buildings and equipment of the department, in cooperation with the department of general services.

2. Establish, supervise and maintain a system of centralized electronic data processing for the department, in cooperation with the department of general services.

3. Assist the director in preparing the departmental budget.

4. *a.* Provide centralized purchasing services for the department, in cooperation with the department of general services. The administrator shall, when the price is reasonably competitive and the quality as intended, purchase soybean-based inks and plastic products with recycled content, including but not limited to plastic garbage can liners, and shall purchase these items in accordance with the schedule established in section 18.18. However, the administrator need not purchase garbage can liners in accordance with the schedule if the liners are utilized by a facility approved by the environmental protection commission created under section 455A.6, for purposes of recycling. For purposes of this subsection, "recycled content" means that the content of the product contains a minimum of thirty percent postconsumer material.

b. The administrator shall do all of the following:

(1) Purchase and use recycled printing and writing paper in accordance with the schedule established in section 18.18 and in conjunction with recommendations made by the department of natural resources.

(2) Establish a wastepaper recycling program by January 1, 1990, in accordance with recommendations made by the department of natural resources and the requirements of section 18.20.

(3) Require in accordance with section 18.6 product content statements, the provision of information regarding on-site review of waste management in product bidding and contract procedures, and compliance with requirements regarding procurement specifications.

(4) Comply with the requirements for the purchase of lubricating oils and industrial oils as established pursuant to section 18.22.

c. The department shall report to the general assembly by February 1 of each year, the following:

(1) A listing of plastic products which are regularly purchased by the board for which recycled content product alternatives are available, including the cost of the plastic products purchased and the cost of the recycled content product alternatives.

(2) Information relating to soybean-based inks and plastic garbage can liners with recycled content

regularly purchased by the department, including the cost of purchasing soybean-based inks and plastic garbage can liners with recycled content and the percentages of soybean-based inks and plastic garbage can liners with recycled content that have been purchased.

d. A motor vehicle purchased by the administrator shall not operate on gasoline other than gasoline blended with at least ten percent ethanol. A state-issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

5. Of all new passenger vehicles and light pickup trucks purchased by the administrator, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion, including but not limited to any of the following:

a. A flexible fuel which is either of the following:

(1) A fuel blended with not more than fifteen percent gasoline and at least eighty-five percent ethanol.

(2) A fuel which is a mixture of processed soybean oil and diesel fuel. At least twenty percent of the fuel by volume must be processed soybean oil.

(3) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.

b. Compressed or liquefied natural gas.

c. Propane gas.

d. Solar energy.

e. Electricity.

The provisions of this subsection do not apply to vehicles and trucks purchased and directly used for law enforcement or off-road maintenance work.

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

7. Assist the director in employing the professional, technical, clerical and secretarial staff for the department and maintain employee records, in cooperation with the department of personnel and provide personnel services, including but not limited to training, safety education and employee counseling.

8. Assist the director in coordinating the respon-

sibilities and duties of the various divisions within the department.

9. Carry out all other general administrative duties for the department.

10. Perform such other duties and responsibilities as may be assigned by the director.

The administrator of administrative services may purchase items from the department of general ser-

vices and may cooperate with the director of general services by providing centralized purchasing services for the department of general services.

95 Acts, ch 44, §3; 95 Acts, ch 62, §4

Subsection 4, paragraphs a and c amended

Subsection 4, paragraph b, subparagraph (3) stricken and former subparagraphs (4) and (5) renumbered as (3) and (4)

CHAPTER 314

ADMINISTRATIVE PROVISIONS FOR HIGHWAYS

314.21 Living roadway trust fund.

1. The living roadway trust fund is created in the office of the treasurer of state. The moneys in this fund shall be used exclusively for the development and implementation of integrated roadside vegetation plans. Except as provided in subsections 2 and 3, the moneys shall only be expended for areas on or adjacent to road, street, and highway right-of-ways. The state department of transportation in consultation with the department of natural resources shall establish standards relating to the type of projects available for assistance. For the fiscal period beginning July 1, 1988, and ending March 31, 1990, the moneys in the fund shall be expended as follows: fifty-six percent on state department of transportation projects; thirty percent on county projects; and fourteen percent on city projects.

A city or county which has a project which qualifies for the use of these funds shall submit a request for the funds to the state department of transportation. A city or county may, at its option, apply moneys allocated for use on city or county projects under this subsection toward qualifying projects on the primary system. The state department of transportation in consultation with the department of natural resources shall determine which projects qualify for the funds and which projects shall be funded if the requests for the funds exceed the availability of the funds. In ranking applications for funds, the department shall consider the proportion of political subdivision matching funds to be provided, if any, and the proportion of private contributions to be provided, if any. In considering the proportion of political subdivision matching funds provided, the department shall consider only those moneys which are in addition to those which the political subdivision has historically provided toward such projects. Funds allocated to the cities, the counties, and the department which are not programmed by the end of each fiscal year shall be available for redistribution to any eligible applicant regardless of the original allocation of funds. Such funds shall be awarded for eligible projects based upon their merit in meeting the program objectives established by the department under section 314.22. The department shall submit a report of all projects funded in the previous fiscal year to the governor and to the general assembly on January 15 of each year.

Beginning April 1, 1990, the moneys in the living roadway trust fund shall be allocated between the state, counties, and cities in the same proportion that the road use tax funds are allocated under section 312.2, subsections 1, 2, 3, and 4. However, after April 1, 1990, a city or county shall not be eligible to receive moneys from the living roadway trust fund unless the city or county has an integrated roadside vegetation management plan in place consistent with the objectives in section 314.22.

2. a. The department may authorize projects which provide grants or loans to local governments and organizations which are developing community entryway enhancement and other planting demonstration projects. Planning, public education, installation, and initial maintenance planning and development may be determined by the department to be eligible activities for funding under this paragraph. Projects approved under this paragraph require a local match or contribution toward the overall project cost.

b. The department may authorize projects which provide grants or loans to local governments for the purchase of specialized equipment and special staff training for the establishment of alternative forms of roadside vegetation. Projects approved under this paragraph require a local match or contribution toward the overall project cost.

c. The department, in order to create greater visual effect, shall investigate alternatives for concentrating plantings at strategic locations to gain a greater visual impact and appeal as well as stronger scenic value. Equal attention shall be given to providing safe and effective habitats for wildlife which can coexist with highways.

d. The department may authorize projects which provide grants or loans to local jurisdictions for increased protection through the use of easements, fee title acquisition, covenants, zoning ordinances, or other provisions for protection of vegetation and desirable environment adjacent to the right-of-way. Off-right-of-way projects shall emphasize vegetation protection or enhancement, scenic and wildlife values, erosion control and enhancement of vegetation management projects within the right-of-ways.

3. a. Moneys allocated to the state under subsection 1 shall be expended as follows:

(1) Fifty thousand dollars annually to the department for the services of the integrated roadside vegetation management coordinator and support.

(2) One hundred thousand dollars annually for education programs, research and demonstration projects, and vegetation inventories and strategies, under section 314.22, subsections 5, 6, and 8.

(3) All remaining moneys for the gateways program under section 314.22, subsection 7.

b. Moneys allocated to the counties under subsection 1 shall be expended as follows:

(1) For the fiscal year beginning July 1, 1995, and ending June 30, 1996, and each subsequent fiscal year, seventy-five thousand dollars to the university of northern Iowa to maintain the position of the state roadside specialist and to continue its integrated roadside vegetation management program providing research, education, training, and technical assistance.

(2) All remaining money for grants or loans under subsection 2, paragraph "a".

c. Moneys allocated to the cities shall be expended for grants or loans under subsection 2, paragraph "a".

95 Acts, ch 220, §26

Subsection 3, paragraph b, subparagraph (1) amended

314.22 Integrated roadside vegetation management.

1. *Objectives.* It is declared to be in the general public welfare of Iowa and a highway purpose for the vegetation of Iowa's roadsides to be preserved, planted, and maintained to be safe, visually interesting, ecologically integrated, and useful for many purposes. The state department of transportation shall provide an integrated roadside vegetation management plan and program which shall be designed to accomplish all of the following:

a. Maintain a safe travel environment.

b. Serve a variety of public purposes including erosion control, wildlife habitat, climate control, scenic qualities, weed control, utility easements, recreation uses, and sustenance of water quality.

c. Be based on a systematic assessment of conditions existing in roadsides, preservation of valuable vegetation and habitats in the area, and the adoption of a comprehensive plan and strategies for cost-effective maintenance and vegetation planting.

d. Emphasize the establishment of adaptable and long-lived vegetation, often native species, matched to the unique environment found in and adjacent to the roadside.

e. Incorporate integrated management practices for the long-term control of damaging insect populations, weeds, and invader plant species.

f. Build upon a public education program allowing input from adjacent landowners and the general public.

g. Accelerate efforts toward increasing and expanding the effectiveness of plantings to reduce wind-induced and water-induced soil erosion and to increase deposition of snow in desired locations.

h. Incorporate integrated roadside vegetation

management with other state agency planning and program activities including the recreation trails program, scenic highways, open space, and tourism development efforts. Agencies should annually report their progress in this area to the general assembly.

2. *Counties may adopt plans.* A county may adopt an integrated roadside vegetation management plan consistent with the integrated roadside vegetation management plan adopted by the department under subsection 1.

3. *Integrated roadside vegetation management technical advisory committee.*

a. The director of the department shall appoint members to an integrated roadside vegetation management technical advisory committee which is created to provide advice on the development and implementation of a statewide integrated roadside vegetation management plan and program and related projects. The department shall report annually in January to the general assembly regarding its activities and those of the committee. Activities of the committee may include, but are not limited to, providing advice and assistance in the following areas:

(1) Research efforts.

(2) Demonstration projects.

(3) Education and orientation efforts for property owners, public officials, and the general public.

(4) Activities of the integrated roadside vegetation management coordinator for integrated roadside vegetation management.

(5) Reviewing applications for funding assistance.

(6) Securing funding for research and demonstrations.

(7) Determining needs for revising the state weed law and other applicable Code sections.

(8) Liaison with the Iowa state association of counties, the Iowa league of cities, and other organizations for integrated roadside vegetation management purposes.

b. The director may appoint any number of persons to the committee but, at a minimum, the committee shall consist of all of the following:

(1) One member representing the utility industry.

(2) One member from the Iowa academy of sciences.

(3) One member representing county government.

(4) One member representing city government.

(5) Two members representing the private sector including community interest groups.

(6) One member representing soil conservation interests.

(7) One member representing the department of natural resources.

(8) One member representing county conservation boards.

Members of the committee shall serve without compensation, but may be reimbursed for allowable expenses from the living roadway trust fund created under section 314.21. No more than a simple majority of the members of the committee shall be of the same gender as provided in section 69.16A. The director of the department shall appoint the chair of the com-

mittee and shall establish a minimum schedule of meetings for the committee.

4. *Integrated roadside vegetation management coordinator.* The integrated roadside vegetation management coordinator shall administer the department's integrated roadside vegetation management plan and program. The department may create the position of integrated roadside vegetation management coordinator within the department or may contract for the services of the coordinator. The duties of the coordinator include, but are not limited to, the following:

- a. Conducting education and awareness programs.
- b. Providing technical advice to the department and the department of natural resources, counties, and cities.
- c. Conducting demonstration projects.
- d. Coordinating inventory and implementation activities.
- e. Providing assistance to local community-based groups for undertaking community entryway projects.
- f. Being a clearinghouse for information from Iowa projects as well as from other states.
- g. Periodically distributing information related to integrated roadside vegetation management.
- h. General coordination of research efforts.
- i. Other duties assigned by the director of transportation.

5. *Education programs.* The department shall develop educational programs and provide educational materials for the general public, landowners, governmental employees, and board members as part of its program for integrated roadside vegetation management. The educational program shall provide all of the following:

- a. The development of public service announcements and television programs about the importance of roadside vegetation in Iowa.
- b. The expansion of existing training sessions and educational curriculum materials for county weed commissioners, government contract sprayers, maintenance staff, and others to include coverage of integrated roadside management topics such as basic plant species identification, vegetation preservation, vegetation inventory techniques, vegetation management and planning procedures, planting techniques, maintenance, communication, and public relations. County and municipal engineers, public works staffs, planning and zoning representatives, parks and habitat managers, and others should be encouraged to participate.
- c. The conducting of statewide and regional conferences and seminars about integrated roadside vegetation management, community entryways, scenic values of land adjoining roadsides, and other topics relating to roadside vegetation.
- d. The preparation, display, and distribution of a variety of public relations material, in order to better inform and educate the traveling public on roadside vegetation management activities. The public relations material shall inform motorists of a variety of roadside vegetation issues including all of the following:

- (1) Benefits of various types of roadside vegetation.
 - (2) Long-term results expected from planting and maintenance practices.
 - (3) Purposes for short-term disturbances in the roadside landscapes.
 - (4) Interesting aspects of the Iowa landscape and individual landscape regions.
 - (5) Other aspects relating to wildlife and soil erosion.
 - e. Preparation and distribution of educational material designed to inform adjoining property owners, farm operators, and others of the importance of roadside vegetation and their responsibilities of proper stewardship of that vegetation resource.
6. *Research and demonstration projects.* The department, as part of its plan to provide integrated roadside vegetation management, shall conduct research and feasibility studies including demonstration projects of different kinds at a variety of locations around the state. The research and feasibility studies may be conducted in, but are not limited to, any of the following areas:
- a. Cost effectiveness or comparison of planting, establishing and maintaining alternative or warm-season, native grass and forb roadside vegetation and traditional cool-season nonnative vegetation.
 - b. Identification of the relationship that roadsides and roadside vegetation have to maintaining water quality, through drainage wells, sediment and pollutant collection and filtration, and other means.
 - c. Impacts of burning as an alternative vegetation management tool on all categories of roads.
 - d. Techniques for more quickly establishing erosion control and permanent vegetative cover on recently disturbed ground as well as interplanting native species in existing vegetative cover.
 - e. Effectiveness of techniques for reduced or selected use of herbicides to control weeds.
 - f. Identification of cross section and slope steepness design standards which provide for motorist safety as well as for improved establishment, maintenance, and replacement of different types of vegetation.
 - g. Identification of a uniform inventory and assessment technique which could be used by many counties in establishing integrated roadside management programs.
 - h. Equipment innovations for seeding and harvesting grasses in difficult terrain settings, roadway ditches, and fore-slopes and back-slopes.
 - i. Identification of the perceptions of motorists and landowners to various types of roadside vegetation and configuration of plantings.
 - j. Market or economic feasibility studies for native seed, forb, and woody plant production and propagation.
 - k. Impacts of vegetation modifications on increasing or decreasing wildlife populations in rural and urban areas.
 - l. Effects of vegetation on the number and location of wildlife road-kills in rural and urban areas.
 - m. Costs to the public for improper off-site resource management adjacent to roadsides.

n. Advantages, disadvantages, and techniques of establishing pedestrian access adjacent to highways and their impacts on vegetation management.

o. Identification of alternative techniques for snow catchment on farmland adjacent to roadsides.

7. *Gateways program.* The department shall develop a gateways program to provide meaningful visual impacts including major new plantings at the important highway entry points to the state and its communities. Substantial and distinctive plantings shall also be designed and installed at these points. Creative and artistic design solutions shall be sought for these improvements. Communications about these projects shall be provided to local groups in order to build community involvement, support, and understanding of their importance. Consideration shall be given to a requirement that gateways projects produce a local match or contribution toward the overall project cost.

8. *Vegetation inventories and strategies.*

a. The department shall coordinate and compile integrated roadside vegetation inventories, classification systems, plans, and implementation strategies for roadsides. Areas of increased program and project emphasis may include, but are not limited to, all of the following:

(1) Additional development and funding of state gateways projects.

(2) Accelerated replacement of dead and unhealthy plants with native and hardy trees and shrubs.

(3) Special interest plantings at selected highly visible locations along primary and interstate highways.

(4) Pilot and demonstration projects.

(5) Additional snow and erosion control plantings.

(6) Welcome center and rest area plantings with native and aesthetically interesting species to create mini-arboretums around the state.

b. The department shall coordinate and compile a reconnaissance of lands to develop an inventory of sites having the potential of being harvested for native grass, forb, and woody plant material seed and growing stock. Highway right-of-ways, parks and

recreation areas, converted railroad right-of-ways, state board of regents' property, lands owned by counties, and other types of public property shall be surveyed and documented for seed source potential. Sites volunteered by private organizations may also be included in the inventory. Inventory information shall be made available to state agencies' staffs, county engineers, county conservation board directors, and others.

95 Acts, ch 3, §2

Subsection 3, paragraph a, subparagraph (8) amended

314.27 Refreshments at rest areas on certain holidays.

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

a. "*Free refreshments*" means water, coffee, cookies, any nonintoxicating, noncarbonated beverage which is not already bottled or canned, doughnuts, or baked dessert goods dispensed by a nonprofit organization, provided that the refreshments are furnished to motorists by a nonprofit organization without charge.

b. "*Holiday periods*" means the Memorial Day and Labor Day weekends, commencing at noon on the preceding Friday and ending at midnight between the Monday and Tuesday of the holiday weekend, and the period surrounding Independence Day, commencing at noon on July 1 and ending at midnight between July 6 and July 7.

2. Nonprofit organizations shall be allowed to provide free refreshments to motorists and to accept, without active solicitation, voluntary donations from motorists during holiday periods at rest areas, as defined in section 306C.10, subject to approval by the department. The department shall approve or disapprove applications by nonprofit organizations, and notify those nonprofit organizations, at least sixty days prior to the holiday period.

3. The department shall adopt rules governing the provision of refreshments at rest areas in accordance with this section.

95 Acts, ch 18, §1

Promotion of Iowa agricultural products at rest areas; 95 Acts, ch 18, §2
NEW section

CHAPTER 321

MOTOR VEHICLES AND LAW OF THE ROAD

Issuance of motor vehicle licenses, nonoperator's identification cards, and handicapped identification devices by certain county treasurers; see §321.179
For future amendments effective January 1, 1997, to section 321.34, subsection 2, and section 321.166, subsection 7, pertaining to the issuance of one validation sticker containing both the month and year of expiration, and to section 321.126, subsection 6, unnumbered paragraph 1, providing for county treasurers to refund registration fees for sold or junked vehicles,
see 95 Acts, ch 118, §7, 19, 20, and 40

321.1 Definitions of words and phrases.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them.

1. "*Alcohol concentration*" means the number of grams of alcohol per any of the following:

- a. One hundred milliliters of blood.
- b. Two hundred ten liters of breath.

c. Sixty-seven milliliters of urine.

2. "Alcoholic beverage" includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption.

3. "Alley" means a thoroughfare laid out, established and platted as such, by constituted authority.

4. "All-terrain vehicle" means a motor vehicle designed to travel on three or more wheels and designed primarily for off-road use but not including farm tractors, construction equipment, forestry vehicles or lawn and grounds maintenance vehicles.

5. "Ambulance" means a motor vehicle which is equipped with life support systems and used to transport sick and injured persons who require emergency medical care to medical facilities.

6. "Authorized emergency vehicle" means vehicles of the fire department, police vehicles, ambulances and emergency vehicles owned by the United States, this state or any subdivision of this state or any municipality of this state, and privately owned ambulances, and fire, rescue or disaster vehicles as are designated or authorized by the director of transportation under section 321.451.

7. "Business district" means the territory contiguous to and including a highway when fifty percent or more of the frontage thereon for a distance of three hundred feet or more is occupied by buildings in use for business.

8. "Chauffeur" means a person who operates a motor vehicle, including a school bus, in the transportation of persons for wages, compensation or hire, or a person who operates a truck tractor, road tractor or a motor truck which has a gross vehicle weight rating exceeding sixteen thousand pounds. A person is not a chauffeur when the operation of the motor vehicle, other than a truck tractor, by the owner or operator is occasional and merely incidental to the owner's or operator's principal business.

A person is not a chauffeur when the operation is by a volunteer fire fighter operating fire apparatus, or is by a volunteer ambulance or rescue squad attendant operating ambulance or rescue squad apparatus. If a volunteer fire fighter or ambulance or rescue squad operator receives nominal compensation not based upon the value of the services performed, the fire fighter or operator shall be considered to be receiving no compensation and classified as a volunteer.

If authorized to transport inmates, probationers, parolees, or work releasees by the director of the Iowa department of corrections or the director's designee, an employee of the Iowa department of corrections or a district department of correctional services is not a chauffeur when transporting the inmates, probationers, parolees, or work releasees.

A farmer or the farmer's hired help is not a chauffeur when operating a truck, other than a truck tractor, owned by the farmer and used exclusively in connection with the transportation of the farmer's own products or property.

If authorized to transport patients or clients by the director of the department of human services or the director's designee, an employee of the department of

human services is not a chauffeur when transporting the patients or clients in an automobile.

A person is not a chauffeur when the operation is by a home care aide in the course of the home care aide's duties.

If authorized to transport students or clients by the superintendent of the Iowa braille and sight saving school or of the Iowa school for the deaf, or the superintendent's respective designee, an employee of the Iowa braille and sight saving school or the Iowa school for the deaf is not a chauffeur when transporting the students or clients.

9. "Combination" or "combination of vehicles" shall be construed to mean a group consisting of two or more motor vehicles, or a group consisting of a motor vehicle and one or more trailers, semitrailers or vehicles, which are coupled or fastened together for the purpose of being moved on the highways as a unit.

10. a. "Combined gross weight" means the gross weight of a combination of vehicles.

b. "Gross combination weight rating" means the combined gross vehicle weight ratings for each vehicle in a combination of vehicles. In the absence of a weight specified by the manufacturer for a towed vehicle, the gross vehicle weight rating of the towed vehicle is its gross weight.

11. For purposes of administering and enforcing the commercial driver's license provisions:

a. "Commercial driver" means the operator of a commercial motor vehicle.

b. "Commercial driver's license" means a motor vehicle license valid for the operation of a commercial motor vehicle.

c. "Commercial driver's license information system" means the national information system established to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

d. "Commercial motor carrier" means a person responsible for the safe operation of a commercial motor vehicle.

e. "Commercial motor vehicle" means a motor vehicle or combination of vehicles used to transport passengers or property if any of the following apply:

(1) The combination of vehicles has a gross combination weight rating of twenty-six thousand one or more pounds provided the towed vehicle or vehicles have a gross weight rating or gross combination weight rating of ten thousand one or more pounds.

(2) The motor vehicle has a gross vehicle weight rating of twenty-six thousand one or more pounds.

(3) The motor vehicle is designed to transport sixteen or more persons, including the operator, or is of a size and design to transport sixteen or more persons, including the operator, but is redesigned or modified to transport less than sixteen handicapped persons.

(4) The motor vehicle is used in the transportation of hazardous material of a type or quantity requiring vehicle placarding.

f. "Foreign jurisdiction" means a jurisdiction outside the fifty United States, the District of Columbia, and Canada.

g. "Nonresident commercial driver's license" means a commercial driver's license issued to a person who is not a resident of the United States or Canada.

h. "Tank vehicle" means a commercial motor vehicle that is designed to transport liquid or gaseous materials within a tank having a rated capacity of one thousand one or more gallons that is either permanently or temporarily attached to the vehicle or chassis.

12. "Commercial vehicle" means a vehicle or combination of vehicles designed principally to transport passengers or property of any kind if any of the following apply:

a. The vehicle or any combination of vehicles has a gross weight or combined gross weight of ten thousand one or more pounds.

b. The vehicle or any combination of vehicles has a gross vehicle weight rating or gross combination weight rating of ten thousand one or more pounds.

c. The vehicle is designed to transport sixteen or more persons, including the driver.

d. The vehicle is used in the transportation of hazardous material of a type or quantity requiring vehicle placarding.

13. "Component part" means any part of a vehicle, other than a tire, having a component part number.

14. "Component part number" means the vehicle identification derivative consisting of numerical and alphabetical designations affixed to a component part by the manufacturer or the department or affixed by, or caused to be affixed by, the owner pursuant to rules promulgated by the department as a means of identifying the component part.

15. "Conviction" means a final conviction or an unvacated forfeiture of bail or collateral deposited to secure a person's appearance in court.

16. "Crosswalk" means that portion of a roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks at intersections, or, any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface.

17. "Dealer" means every person engaged in the business of buying, selling or exchanging vehicles of a type required to be registered hereunder and who has an established place of business for such purpose in this state.

18. "Demolisher" means any agency or person whose business is to convert a vehicle to junk, processed scrap or scrap metal, or otherwise to wreck or dismantle vehicles.

19. "Department" means the state department of transportation. "Commission" means the state transportation commission.

20. "Director" means the director of the state department of transportation or the director's designee.

21. "Endorsement" means an authorization to a person's motor vehicle license required to permit the person to operate certain types of motor vehicles or

to transport certain types or quantities of hazardous materials.

22. "Essential parts" mean all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

23. "Established place of business" means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the dealer's or manufacturer's books and records are kept and a large share of the dealer's or manufacturer's business is transacted.

24. "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

25. "Fire vehicle" means a motor vehicle which is equipped with pumps, tanks, hoses, nozzles, ladders, generators, or other fire apparatus used to transport fire personnel, fight fires, and respond to emergencies.

26. "Foreign vehicle" means every vehicle of a type required to be registered hereunder brought into this state from another state, territory, or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

27. The linear measure of the plot of ground upon which the building is located abutting upon the highway shall be deemed "frontage occupied by the building," and the phrase "frontage on such highway for a distance of three hundred feet or more" shall mean the total frontage on both sides of the highway for such distance.

28. "Garage" means every place of business where motor vehicles are received for housing, storage, or repair for compensation.

29. a. "Gross weight" means the empty weight of a vehicle plus the maximum load to be carried by the vehicle. The maximum load to be carried by a passenger-carrying vehicle shall be determined by multiplying one hundred fifty pounds by the number of passenger seats carried by such vehicle.

b. "Unladen weight" means the weight of a vehicle or vehicle combination without load.

c. "Gross vehicle weight rating" means the weight specified by the manufacturer as the loaded weight of a single vehicle.

30. "Guaranteed arrest bond certificate" means any printed, unexpired certificate issued by an automobile club or association to any of its members, or any printed, unexpired certificate issued by an insurance company authorized to write automobile liability insurance within this state, which said certificate is signed by such member or insured and contains a printed statement that such automobile club, association or insurance company and a surety company which is doing business in this state under the provisions of section 515.48, subsection 2, guarantee the appearance of the person whose signature

appears on the certificate and that they will, in the event of failure of such person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed two hundred dollars. If such insurance company is itself qualified under the provisions of section 515.48, subsection 2, then it may be its own surety. Bail in this form shall be subject to the forfeiture and enforcement provisions with respect to bail bonds in criminal cases as provided by law.

31. "*Hazardous material*" means a substance or material which has been determined by the United States secretary of transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

32. "*Implement of husbandry*" means every vehicle which is designed for agricultural purposes and exclusively used, except as herein otherwise provided, by the owner thereof in the conduct of the owner's agricultural operations. Implements of husbandry shall also include:

a. Portable livestock loading chutes without regard to whether such chutes are used by the owner in the conduct of the owner's agricultural operations, provided, that such chutes are not used as a vehicle on the highway for the purpose of transporting property.

b. Any vehicle which is principally designed for agricultural purposes and which is moved during daylight hours for a distance not to exceed one hundred miles by a person either:

(1) From a place at which the vehicles are manufactured, fabricated, repaired, or sold to a farm site or a retail seller or from a retail seller to a farm site;

(2) To a place at which the vehicles are manufactured, fabricated, repaired, or sold from a farm site or a retail seller or to a retail seller from a farm site; or

(3) From one farm site to another farm site.

For the purpose of this subsection and sections 321.383 and 321.453, "*farm site*" means a place or location at which vehicles principally designed for agricultural purposes are used or intended to be used in agricultural operations or for the purpose of exhibiting, demonstrating, testing, or experimenting with the vehicles.

c. Any semitrailer converted to a full trailer by the use of a dolly used by the owner in the conduct of the owner's agricultural operations to transport agricultural products being towed by a farm tractor provided the vehicle is operated in compliance with the following requirements:

(1) The towing unit is equipped with a braking device which can control the movement of and stop the vehicles. When the semitrailer is being towed at a speed of twenty miles per hour, the braking device shall be adequate to stop the vehicles within fifty feet from the point the brakes are applied. The semitrailer shall be equipped with brakes upon all wheels.

(2) The towing vehicle shall be equipped with a rear view mirror to permit the operator a view of the highway for a distance of at least two hundred feet to the rear.

(3) The semitrailer shall be equipped with a turn signal device which operates in conjunction with or separately from the rear taillight and shall be plainly visible from a distance of one hundred feet.

(4) The semitrailer shall be equipped with two flashing amber lights one on each side of the rear of the vehicle and be plainly visible for a distance of five hundred feet in normal sunlight or at night.

(5) The semitrailer shall be operated in compliance with sections 321.123 and 321.463.

d. All-terrain vehicles.

e. (1) Portable tanks, nurse tanks, trailers, and bulk spreaders which are not self-propelled and which have gross weights of not more than twelve tons and are used for the transportation of fertilizer and chemicals used for farm crop production.

(2) Other types of equipment than those listed in subparagraph (1) which are used primarily for the application of fertilizers and chemicals in farm fields or for farm storage.

f. Self-propelled machinery or machinery towed by a motor vehicle or farm tractor operated at speeds of less than thirty miles per hour. The machinery must be specifically designed for, or especially adapted to be capable of, incidental over-the-road and primary off-road usage. In addition, the machinery must be used exclusively for the mixing and dispensing of nutrients to bovine animals fed at a feedlot, or the application of organic or inorganic plant food materials, agricultural limestone, or agricultural chemicals. However, the machinery shall not be specifically designed or intended for the transportation of such nutrients, plant food materials, agricultural limestone, or agricultural chemicals.

Notwithstanding the other provisions of this subsection any vehicle covered thereby if it otherwise qualifies may be registered as special mobile equipment, or operated or moved under the provisions of sections 321.57 to 321.63, if the person in whose name such vehicle is to be registered or to whom a special plate or plates are to be issued elects to do so and under such circumstances the provisions of this subsection shall not be applicable to such vehicle, nor shall such vehicle be required to comply with the provisions of sections 321.384 to 321.429, when such vehicle is moved during daylight hours, provided however, the provisions of section 321.383, shall remain applicable to such vehicle.

33. "*Intersection*" means the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

34. "*Laned highway*" means a highway the roadway of which is divided into three or more clearly marked lanes for vehicular traffic.

35. "*Light delivery truck*," "*panel delivery truck*" or "*pickup*" means any motor vehicle designed to carry merchandise or freight of any kind, not to exceed two thousand pounds.

36. "Local authorities" means every county, municipal, and other local board or body having authority to adopt local police regulations under the Constitution and laws of this state.

37. "Manufacturer" means every person engaged in the business of fabricating or assembling vehicles of a type required to be registered. It does not include a person who converts, modifies or alters a completed motor vehicle manufactured by another person. It includes a person who uses a completed motor vehicle manufactured by another person to construct a class "B" motor home as defined in section 321.124.

"Completed motor vehicle" means a motor vehicle which does not require any additional manufacturing operations to perform its intended function except the addition of readily attachable equipment, components or minor finishing operations.

"Final stage manufacturer" means a person who performs such manufacturing operations on an incomplete vehicle that it becomes a completed vehicle. A final stage manufacturer shall furnish to the department a document which identifies that the vehicle was incomplete prior to that manufacturing operation. The identification shall include the name of the incomplete vehicle manufacturer, the date of manufacture, and the vehicle identification number to ascertain that the document applies to a particular incomplete vehicle.

"Incomplete vehicle" means an assemblage, as a minimum, consisting of a frame and chassis structure, power train, steering system, suspension system, and braking system, to the extent that those systems are to be a part of the completed vehicle, that requires further manufacturing operations, other than the addition of readily attachable equipment, components, or minor finishing operations.

38. "Metal tire" means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

39. a. "Mobile home" means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons.

b. "Travel trailer" means a vehicle without motive power used, manufactured, or constructed to permit its use as a conveyance upon the public streets and highways and designed to permit its use as a place of human habitation by one or more persons. The vehicle may be up to eight feet six inches in width and its overall length shall not exceed forty feet. The vehicle shall be customarily or ordinarily used for vacation or recreational purposes and not used as a place of permanent habitation. If the vehicle is used in this state as a place of human habitation for more than ninety consecutive days in one location it shall be classed as a mobile home regardless of the size limitations provided in this paragraph.

c. "Fifth-wheel travel trailer" means a type of travel trailer which is towed by a pickup by a con-

necting device known as a fifth wheel. However, this type of travel trailer may have an overall length which shall not exceed forty feet.

d. "Motor home" means a motor vehicle designed as an integral unit to be used as a conveyance upon the public streets and highways and for use as a temporary or recreational dwelling and having at least four, two of which shall be systems specified in subparagraphs (1), (4) or (5) of this paragraph, of the following permanently installed systems which meet American national standards institute and national fire protection association standards in effect on the date of manufacture:

(1) Cooking facilities.

(2) Ice box or mechanical refrigerator.

(3) Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both.

(4) Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both.

(5) Heating or air conditioning system or both, separate from the vehicle engine or the vehicle engine electrical system.

(6) A one hundred ten-one hundred fifteen volt alternating current electrical system separate from the vehicle engine electrical system either with its own power supply or with a connection for an external source, or both, or a liquefied petroleum system and supply.

40. a. "Motorcycle" means every motor vehicle having a saddle or seat for the use of the rider and designed to travel on not more than three wheels in contact with the ground including a motor scooter but excluding a tractor and a motorized bicycle.

b. "Motorized bicycle" or "motor bicycle" means a motor vehicle having a saddle or a seat for the use of a rider and designed to travel on not more than three wheels in contact with the ground, with an engine having a displacement no greater than fifty cubic centimeters and not capable of operating at a speed in excess of twenty-five miles per hour on level ground unassisted by human power.

c. "Bicycle" means a device having two wheels and having at least one saddle or seat for the use of a rider which is propelled by human power.

41. "Motor truck" means every motor vehicle designed primarily for carrying livestock, merchandise, freight of any kind, or over nine persons as passengers.

42. a. "Motor vehicle" means a vehicle which is self-propelled, but not including vehicles known as trackless trolleys which are propelled by electric power obtained from overhead trolley wires and are not operated upon rails.

b. "Used motor vehicle" or "secondhand motor vehicle" or "used car" means a motor vehicle of a type subject to registration under the laws of this state which has been sold "at retail" as defined in chapter 322 and previously registered in this or any other state.

c. "New car" means a car which has not been sold "at retail" as defined in chapter 322.

d. "Car" or "automobile" means a motor vehicle designed primarily for carrying nine passengers or less, excluding motorcycles and motorized bicycles.

43. "Motor vehicle license" means any license or permit issued to a person to operate a motor vehicle on the highways of this state, including but not limited to a driver's, commercial driver's, temporary restricted, or temporary license and an instruction, chauffeur's instruction, commercial driver's instruction, temporary restricted, or temporary permit.

For purposes of license suspension, revocation, bar, disqualification, cancellation, or denial under chapters 321, 321A, 321C, and 321J, "motor vehicle license" includes any privilege to operate a motor vehicle.

44. "Multipurpose vehicle" means a motor vehicle designed to carry not more than ten people, and constructed either on a truck chassis or with special features for occasional off-road operation.

45. "Nonresident" means every person who is not a resident of this state.

46. "Official traffic-control devices" means all signs, signals, markings, and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

47. "Official traffic-control signal" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

48. "Operator" or "driver" means every person who is in actual physical control of a motor vehicle upon a highway.

49. "Owner" means a person who holds the legal title of a vehicle, or in the event a vehicle is the subject of a security agreement with an immediate right of possession vested in the debtor, then such debtor shall be deemed the owner for the purpose of this chapter.

50. "Peace officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations in addition to its meaning in section 801.4.

51. "Pedestrian" means any person afoot.

52. "Person" means every natural person, firm, copartnership, association, or corporation. Where the term "person" is used in connection with the registration of a motor vehicle, it shall include any corporation, association, copartnership, company, firm, or other aggregation of individuals which owns or controls such motor vehicle as actual owner, or for the purpose of sale or for renting, whether as agent, salesperson, or otherwise.

53. "Pneumatic tire" means every tire in which compressed air is designed to support the load.

54. "Private road" or "driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

55. "Railroad" means a carrier of persons or property upon cars operated upon stationary rails.

56. "Railroad corporation" means any corporation organized under the laws of this state or any other state for the purpose of operating the railroad within this state.

57. "Railroad sign" or "signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

58. "Railroad train" means an engine or locomotive with or without cars coupled thereto, operated upon rails.

59. "Reconstructed vehicle" means every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

60. "Registration year" means the period of twelve consecutive months beginning on the first day of the month following the month of the birth of the owner of the vehicle for vehicles registered by the county treasurer and the calendar year for vehicles registered by the department or motor trucks and truck tractors with a combined gross weight exceeding five tons which are registered by the county treasurer.

61. "Remanufactured vehicle" means every vehicle of a type required to be registered and having a gross vehicle weight rating of at least thirty thousand pounds that has been disassembled, resulting in the total separation of the major integral parts and which has been reassembled with those parts being replaced with new or rebuilt parts. In every instance, a new diesel engine and all new tires shall be installed and shall carry manufacturers' warranties.

Every vehicle shall include, but not be limited to, new or rebuilt component parts consisting of steering gear, clutch, transmission, differential, engine radiator, engine fan hub, engine starter, alternator, air compressor and cab. For purposes of this subsection, "rebuilt" means the replacement of any element of a component part which appears to limit the serviceability of the part. A minimum of twenty thousand dollars shall be expended on each vehicle and the expense must be verifiable by invoices, work orders, or other documentation as required by the department.

The department may establish equipment requirements and a vehicle inspection procedure for remanufactured vehicles. The department may establish a fee for the inspection of remanufactured vehicles not to exceed one hundred dollars for each vehicle inspected.

62. "Rescue vehicle" means a motor vehicle which is equipped with rescue, fire, or life support equipment used to assist and rescue persons in emergencies or support emergency personnel in the performance of their duties.

63. "Residence district" means the territory within a city contiguous to and including a highway, not comprising a business, suburban or school district, where forty percent or more of the frontage on

such highway for a distance of three hundred feet or more is occupied by dwellings or by dwellings and buildings in use for business.

64. "*Right of way*" means the privilege of the immediate use of the highway.

64A. "*Road construction zone*" means the portion of a highway which is identified by posted or moving signs as being under construction. The zone starts upon meeting the first sign identifying the zone and continues until a posted or moving sign indicates that the construction zone has ended.

65. "*Road tractor*" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

66. "*Roadway*" means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

67. "*Rural residence district*" means an unincorporated area established by a county board of supervisors which is contiguous to and including a secondary highway, not comprising a business district, where forty percent or more of the frontage of the highway for a distance of three hundred feet or more is occupied by dwellings or by dwellings and buildings in use for business. For purposes of this subsection, farm houses and farm buildings are not to be considered.

68. "*Safety zone*" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

68A. "*Salvage pool*" means the business of selling at auction wrecked or salvage vehicles, as defined in section 321.52.

69. "*School bus*" means every vehicle operated for the transportation of children to or from school, except vehicles which are:

a. Privately owned and not operated for compensation;

b. Used exclusively in the transportation of the children in the immediate family of the driver;

c. Operated by a municipally or privately owned urban transit company for the transportation of children as part of or in addition to their regularly scheduled service; or

d. Designed to carry not more than nine persons as passengers, either school owned or privately owned, which are used to transport pupils to activity events in which the pupils are participants or used to transport pupils to their homes in case of illness or other emergency situations. The vehicles operated under the provisions of this paragraph shall be operated by employees of the school district who are specifically approved by the local superintendent of schools for the assignment.

70. "*School district*" means the territory contiguous to and including a highway for a distance of two hundred feet in either direction from a schoolhouse in a city.

71. "*Semitrailer*" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Wherever the word "*trailer*" is used in this chapter, same shall be construed to also include "*semitrailer*."

A "*semitrailer*" shall be considered in this chapter separately from its power unit.

72. "*Sidewalk*" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

73. "*Solid tire*" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

74. "*Specially constructed vehicle*" means every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

75. "*Special mobile equipment*" means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including road construction or maintenance machinery and ditch-digging apparatus. This description does not exclude other vehicles which are within the general terms of this subsection.

76. "*Special truck*" means a motor truck or truck tractor not used for hire with a gross weight registration of six through thirty-two tons used by a person engaged in farming to transport commodities produced only by the owner, or to transport commodities purchased by the owner for use in the owner's own farming operation or occasional use for charitable purposes. "*Special truck*" also means a motor truck or truck tractor not used for hire with a gross weight registration of six through thirty-two tons used by a person engaged in farming who assists another person engaged in farming through an exchange of services. A "*special truck*" does not include a truck tractor operated more than seventy-five hundred miles annually.

77. "*Stinger-steered automobile transporter*" means any vehicle combination designed and used specifically for the transport of assembled highway vehicles, recreational vehicles, or boats in which the fifth wheel is located on a drop frame located below and behind the rearmost axle of the power unit.

78. "*Street*" or "*highway*" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

79. "*Suburban district*" means all other parts of a city not included in the business, school or residence districts.

80. "*Tandem axle*" means any two or more consecutive axles whose centers are more than forty inches but not more than ninety-six inches apart.

81. "Through (or thru) highway" means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter or such entrances are controlled by a peace officer or traffic-control signal. The term "arterial" is synonymous with "through" or "thru" when applied to highways of this state.

82. "Tourist attraction" means a business, activity, service, or site where a major portion of the product or service provided is tourist oriented.

83. "Tourist-oriented directional sign" means a sign providing identification and directional information for a tourist attraction.

84. "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highway for purposes of travel.

85. "Trailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

86. "Trailer coach" means either a trailer or semi-trailer designed for carrying persons.

87. "Transporter" means a person engaged in the business of delivering vehicles of a type required to be registered or titled in this state who has received authority to make delivery as specified by rules adopted by the department.

88. "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

89. "Used vehicle parts dealer" means a person engaged in the business of selling bodies, parts of bodies, frames or component parts of used vehicles subject to registration under this chapter.

90. "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway. "Vehicle" does not include:

- a. Any device moved by human power.
- b. Any device used exclusively upon stationary rails or tracks.
- c. Any integral part of a truck tractor or road tractor which is mounted on the frame of the truck tractor or road tractor immediately behind the cab and which may be used to transport persons and property but which cannot be drawn upon the highway by the truck tractor or another motor vehicle.
- d. Any steering axle, dolly, auxiliary axle or other integral part of another vehicle which in and of itself is incapable of commercially transporting any person or property but is used primarily to support another vehicle.

91. "Vehicle identification number" or the initials VIN mean the numerical and alphabetical designations affixed to a vehicle or a component part of a vehicle by the manufacturer or the department or

affixed by, or caused to be affixed by, the owner pursuant to rules promulgated by the department as a means of identifying the vehicle.

92. "Vehicle rebuilder" means a person engaged in the business of rebuilding or restoring to operating condition vehicles subject to registration under this chapter, which have been damaged or wrecked.

93. "Vehicle salvager" means a person engaged in the business of scrapping vehicles, dismantling or storing wrecked or damaged vehicles or selling reusable parts of vehicles or storing vehicles not currently registered which vehicles are subject to registration under this chapter.

94. "Where a vehicle is kept" shall refer to the county of residence of the owner or to the county where the vehicle is mainly kept if said owner is a nonresident of the state.

95 Acts, ch 10, §1; 95 Acts, ch 55, §1, 2; 95 Acts, ch 56, §1; 95 Acts, ch 118, §1, 2

Subsection 8, NEW unnumbered paragraph 7
Subsection 11, NEW paragraph d and former paragraphs d-g relettered as e-h

Subsection 11, paragraph e, subparagraph (1) amended
Subsection 32, paragraph f amended
Subsection 39, paragraph b amended
Subsection 76 amended

321.12 Obsolete records destroyed.

The director may destroy any records of the department which have been maintained on file for three years which the director deems obsolete and of no further service in carrying out the powers and duties of the department. However, operating records relating to a person who has been issued a commercial driver's license shall be maintained on file in accordance with rules adopted by the department. Records concerning suspensions authorized under section 321.210, subsection 1, paragraph "g", and section 321.210A may be destroyed six months after the suspension is terminated and the requirements of section 321.191 have been satisfied. Records concerning suspensions and surrender of licenses or registrations required under section 321A.31 for failing to maintain proof of financial responsibility, as defined in section 321A.1, may be destroyed six months after the requirements of sections 321.191 and 321A.29 have been satisfied.

The director shall destroy any operating records pertaining to arrests or convictions for operating while intoxicated, in violation of section 321J.2, which are more than twelve years old. The twelve-year period shall commence with the date of the arrest or conviction for the offense, whichever first occurs. However, the director shall not destroy operating records which pertain to arrests or convictions for operating while intoxicated after the expiration of twelve years when the motor vehicle being operated was a commercial motor vehicle or if all of the provisions of the court order have not been satisfied.

The director shall destroy any operating records pertaining to revocations for violations of section 321J.2A which are more than twelve years old. The twelve-year period shall commence with the date the revocation of the person's operating privileges be-

comes effective. This paragraph shall not apply to records of revocations which pertain to violations of section 321J.2A by persons operating a commercial motor vehicle.

95 Acts, ch 48, §2; 95 Acts, ch 55, §3
Unnumbered paragraph 2 amended
NEW unnumbered paragraph 3

321.13 Authority to grant or refuse applications.

The department shall examine and determine the genuineness, regularity, and legality of every application made to the department, and may investigate or require additional information. The department may reject any application if not satisfied of the genuineness, regularity, or legality of the application or the truth of any statement made within the application, or for any other reason, when authorized by law. The department may retain possession of any record or document until the investigation of the application is completed if it appears that the record or document is fictitious or unlawfully or erroneously issued and shall not return the record or document if it is determined to be fictitious or unlawfully or erroneously issued.

95 Acts, ch 118, §3
Section amended

321.18 Vehicles subject to registration — exception.

Every motor vehicle, trailer, and semitrailer when driven or moved upon a highway shall be subject to the registration provisions of this chapter except:

1. Any such vehicle driven or moved upon a highway in conformance with the provisions of this chapter relating to manufacturers, transporters, dealers, or nonresidents as contemplated by section 321.53 and chapter 326, or under a temporary registration permit issued by the department as hereinafter authorized.

2. Any such vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another.

3. Any implement of husbandry.

4. Any special mobile equipment as herein defined.

5. Any vehicle which is used exclusively for industrial purposes, in the operation of an industrial or manufacturing plant, consisting of a single unit comprising a group of buildings separated by streets, alleys, or railroad tracks, and which vehicle is used solely to transport materials from one part of the plant to another or from an adjacent railroad track to the plant and in so doing incidentally using said streets or alleys for not more than one thousand feet.

6. Any vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

7. Any school bus in this state used exclusively for the transportation of pupils to and from school or a school function or for the purposes provided in section 285.1, subsection 1, and section 285.10, subsection 9, or used exclusively for the transportation of children

enrolled in a federal head start program. Upon application the department shall, without charge, issue a registration certificate and shall also issue registration plates which shall have imprinted thereon the words "Private School Bus" and a distinguishing number assigned to the applicant. Such plates shall be attached to the front and rear of each bus exempt from registration under this subsection.

8. Any mobile home.

95 Acts, ch 118, §4
Subsection 7 amended

321.19 Exemptions — distinguishing plates — definitions of urban transit company and regional transit system.

1. All vehicles owned or leased for a period of sixty days or more by the government and used in the transaction of official business by the representatives of foreign governments or by officers, boards, or departments of the government of the United States, and by the state, counties, municipalities and other political subdivisions of the state including vehicles used by an urban transit company operated by a municipality or a regional transit system, and self-propelling vehicles used neither for the conveyance of persons for hire, pleasure, or business nor for the transportation of freight other than those used by an urban transit company operated by a municipality or a regional transit system, and all fire trucks, providing they are not owned and operated for a pecuniary profit, are exempted from the payment of the fees imposed by this chapter, except as provided for urban transit companies in subsection 2, but are not exempt from the penalties provided in this chapter.

The department shall furnish, on application, free of charge, distinguishing plates for vehicles thus exempted, which plates except plates on Iowa highway safety patrol vehicles shall bear the word "official" and the department shall keep a separate record. Registration plates issued for Iowa highway safety patrol vehicles, except unmarked patrol vehicles, shall bear two red stars on a yellow background, one before and one following the registration number on the plate, which registration number shall be the officer's badge number. Registration plates issued for a county sheriff's patrol vehicles shall display one seven-pointed gold star followed by the letter "S" and the call number of the vehicle. However, the director of general services or the director of transportation may order the issuance of regular registration plates for any exempted vehicle used by peace officers in the enforcement of the law, persons enforcing chapter 124 and other laws relating to controlled substances, persons in the department of justice and the department of inspections and appeals who are regularly assigned to conduct investigations which cannot reasonably be conducted with a vehicle displaying "official" state registration plates, and persons in the lottery division of the department of revenue and finance whose regularly assigned duties relating to security or the carrying of lottery tickets cannot reasonably be conducted with

a vehicle displaying "official" registration plates. For purposes of sale of exempted vehicles, the exempted governmental body, upon the sale of the exempted vehicle, may issue for in-transit purposes a paste-board card bearing the words "Vehicle in Transit", the name of the official body from which the vehicle was purchased, together with the date of the purchase plainly marked in at least one-inch letters, and other information required by the department. The in-transit card is valid for use only within forty-eight hours after the purchase date as indicated on the bill of sale which shall be carried by the driver.

2. "*Urban transit company*" means any person, firm, corporation, company, or municipality which operates buses or trolley cars or both, primarily upon the streets of cities over well-defined routes between certain termini, for the transportation of passengers for a uniform fare, and which accepts for passengers all who present themselves for transportation without discrimination up to the limit of the capacity of each vehicle. Included are street railways, plants, equipment, property, and rights, used and useful in the transportation of passengers. Motor carriers and interurbans subject to the jurisdiction of the state department of transportation, and taxicabs, are not included.

The department, in accordance with subsection 1, shall furnish distinguishing plates for vehicles used by urban transit companies operated by a municipality. No other provision of law providing for the payment of taxes, registration, or license fees for vehicles shall be applicable to any bus, car, or vehicle for the transportation of passengers owned and operated by any urban transit company.

Section 452A.3 and chapter 326 are not applicable to urban transit companies or systems.

3. "*Regional transit system*" means a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor, except as agreed upon by the department. Each county board of supervisors within the region is responsible for determining the service and funding within its county. However, the administration and overhead support services for the overall regional transit system shall be consolidated into one existing or new agency to be mutually agreed upon by the participating members. Privately chartered bus services and uses other than providing services that are open and public on a shared ride basis shall not be construed to be a regional transit system.

95 Acts, ch 118, §5

Subsection 1, unnumbered paragraph 2 amended

321.20 Application for registration and certificate of title.

Except as provided in this chapter, an owner of a vehicle subject to registration shall make application to the county treasurer, of the county of the owner's residence, or if a nonresident to the county treasurer of the county where the primary users of the vehicle

are located, or if a lessor of the vehicle pursuant to chapter 321F which vehicle has a gross vehicle weight of less than ten thousand pounds, to the county treasurer of the county of the lessee's residence, for the registration and issuance of a certificate of title for the vehicle upon the appropriate form furnished by the department. However, upon the transfer of ownership, the owner of a vehicle subject to the proportional registration provisions of chapter 326 shall make application for registration and issuance of a certificate of title to either the department or the appropriate county treasurer. The application shall be accompanied by a fee of ten dollars, and shall bear the owner's signature written with pen and ink. A nonresident owner of two or more vehicles subject to registration may make application for registration and issuance of a certificate of title for all vehicles subject to registration to the county treasurer of the county where the primary user of any of the vehicles is located. The owner of a mobile home shall make application for a certificate of title under this section. The application shall contain:

1. The name, social security number, motor vehicle license number, date of birth, bona fide residence and mailing address of the owner. If the owner is a firm, association, or corporation, the application shall contain the business address and federal employer identification number of the owner.

2. A description of the vehicle including, insofar as the hereinafter specified data may exist with respect to a given vehicle, the make, model, type of body, the number of cylinders, the type of motor fuel used, the serial number of the vehicle, manufacturer's identification number, the engine or other number of the vehicle and whether new or used and if a new vehicle the date of sale by the manufacturer or dealer to the person intending to operate such vehicle.

3. Such further information as may reasonably be required by the department.

4. A statement of the applicant's title and of all liens or encumbrances upon said vehicle and the names and addresses of all persons having any interest therein and the nature of every such interest. When such application refers to a new vehicle, it shall be accompanied by a manufacturer's or importer's certificate duly assigned as provided in section 321.45.

5. The amount of tax to be paid under section 423.7.

95 Acts, ch 194, §1

1995 amendments to subsection 1 effective January 1, 1996; 95 Acts, ch 194, §12

Subsection 1 amended

321.20A Certificate of title — commercial motor vehicles.

1. Notwithstanding other provisions of this chapter, the owner of a commercial motor vehicle with a gross vehicle weight rating of twenty-six thousand one pounds or more, subject to the proportional registration provisions of chapter 326, may make application to the department for a certificate of title. The

application for certificate of title shall be made within fifteen days of purchase or transfer and accompanied by a ten dollar title fee and appropriate use tax.

2. A commercial motor vehicle issued a certificate of title under this section shall not be subject to registration fees until the commercial motor vehicle is driven upon the highways. The registration fee due shall be prorated for the remaining unexpired months of the registration year. Ownership of a commercial motor vehicle issued a certificate of title under this section shall not be transferred until registration fees have been paid to the department.

3. The certificate of title provision for commercial motor vehicles with a gross vehicle weight rating of twenty-six thousand one pounds or more shall apply to owners with fleets of more than fifty commercial motor vehicles based in Iowa under the proportional registration provisions of chapter 326. The original certificate of title shall be delivered to the owner if no security interest or encumbrance appears on the certificate, otherwise the certificate of title shall be delivered by the department to the person holding the first security interest or encumbrance as shown on the certificate of title.

95 Acts, ch 118, §6
NEW section

321.24 Issuance of registration and certificate of title.

Upon receipt of the application for title and payment of the required fees for a motor vehicle, trailer, or semitrailer, the county treasurer or the department shall, when satisfied as to the application's genuineness and regularity, and, in the case of a mobile home, that taxes are not owing under chapter 435, issue a certificate of title and, except for a mobile home, a registration receipt, and shall file the application, the manufacturer's or importer's certificate, the certificate of title, or other evidence of ownership, as prescribed by the department. The registration receipt shall be delivered to the owner and shall contain upon its face the date issued, the name and address of the owner, the registration number assigned to the vehicle, the title number assigned to the owner of the vehicle, the amount of the fee paid, the amount of tax paid pursuant to section 423.7, the type of fuel used, and a description of the vehicle as determined by the department, and upon the reverse side a form for notice of transfer of the vehicle.

The county treasurer shall maintain in the county record system information contained on the registration receipt. The information shall be accessible by registration number and shall be open for public inspection during reasonable business hours. Copies the department requires shall be sent to the department in the manner and at the time the department directs.

The certificate of title shall contain upon its face the identical information required upon the face of the registration receipt. In addition, the certificate of title shall contain a statement of the owner's title, the

amount of tax paid pursuant to section 423.7, the name and address of the previous owner, and a statement of all security interests and encumbrances as shown in the application, upon the vehicle described, including the nature of the security interest, date of notation, and name and address of the secured party.

If the prior certificate of title is from another state and indicates that the vehicle was rebuilt, the new certificate of title shall contain the designation of "REBUILT" stamped or printed on its face together with the name of the state issuing the prior title. The designation of "REBUILT" and the name of the other state shall be retained on all subsequent Iowa certificates of title for the vehicle. If the prior certificate of title is from another state and indicates that the vehicle was rebuilt, the registration receipt shall contain the designation of "REBUILT" stamped and printed on its face. The stamped designation of "REBUILT" shall be located on the center of the right side of the registration receipt in black letters no bigger than sixteen point type. The designation shall be retained on the face of all subsequent registration receipts for the vehicle.

If the prior certificate of title is from another state and indicates that the vehicle was junked, an Iowa junking certificate shall be issued according to section 321.52, subsections 2 and 3. If the prior certificate of title from another state indicates that the vehicle is salvaged and not rebuilt or is a salvage certificate of title, an Iowa salvage certificate of title shall be issued and a "SALVAGE" designation shall be retained on all subsequent Iowa certificates of title and registration receipts for the vehicle, except as provided under section 321.52, subsection 4, paragraph "b". The department may require that subsequent Iowa certificates of title retain other states' designations which indicate that a vehicle had incurred prior damage. The department shall determine the manner in which other states' rebuilt, salvage, or other designations are to be indicated on Iowa titles.

The certificate shall bear the seal of the county treasurer or of the department, and the signature of the county treasurer, the deputy county treasurer, or the department director or deputy designee. The certificate shall provide space for the signature of the owner. The owner shall sign the certificate of title in the space provided with pen and ink upon its receipt. The certificate of title shall contain upon the reverse side a form for assignment of title or interest and warranty by the owner, for reassignments by a dealer licensed in this state or in another state if the state in which the dealer is licensed permits Iowa licensed dealers to similarly reassign certificates of title. Attached to the certificate of title shall be an application for a new certificate of title by the transferee as provided in this chapter. However, titles for mobile homes shall not be reassigned by licensed dealers. All certificates of title shall be typewritten or printed by other mechanical means. Notwithstanding section 321.1, subsection 17, as used in this paragraph "dealer" means every person engaged in the business

of buying, selling, or exchanging vehicles of a type required to be registered under this chapter.

The original certificate of title shall be delivered to the owner if no security interest or encumbrance appears on the certificate. Otherwise the certificate of title shall be delivered by the county treasurer or the department to the person holding the first security interest or encumbrance as shown in the certificate.

The county treasurer or the department shall maintain in the county or department records system information contained on the certificate of title. The information shall be accessible by title certificate number for a period of three years from the date of notification of cancellation of title or that a new title has been issued as provided in this chapter. Copies the department requires shall be sent to the department in the manner and at the time the department directs. The department shall designate a uniform system of title numbers to indicate the county of issuance.

A vehicle shall be registered for the registration year. A vehicle registered for the first time in this state shall be registered for the remaining unexpired months of the registration year and pay a registration fee prorated for the remaining unexpired months of the registration year.

If the county treasurer or department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, or a junking certificate has been issued for the vehicle but a certificate of title will not be reissued under section 321.52, subsection 3, and the vehicle qualifies as an antique vehicle under section 321.115, subsection 1, the county treasurer or department may register the vehicle but shall as a condition of issuing a certificate of title and registration receipt, require the applicant to file with the department a bond in the form prescribed by the department and executed by the applicant, and either accompanied by the deposit of cash with the department or also executed by a person authorized to conduct a surety business in this state. The bond shall be in an amount equal to one and one-half times the current value of the vehicle as determined by the department and conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the vehicle or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss, or damage, including reasonable attorney's fees, by reason of the issuance of the certificate of title of the vehicle or on account of any defect in or undisclosed security interest upon the right, title and interest of the applicant in and to the vehicle. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, and any deposit accompanying it, shall be returned at the end of three years or prior thereto if the vehicle is no longer registered in this state and the currently valid certificate of title is surrendered to the department,

unless the department has been notified of the pendency of an action to recover on the bond.

95 Acts, ch 45, §1

Unnumbered paragraphs 4 and 10 amended

321.30 Grounds for refusing registration or title.

The department or the county treasurer shall refuse registration and issuance of a certificate of title or any transfer of title and registration upon any of the following grounds:

1. That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the department or that the applicant is not entitled to registration and issuance of a certificate of title of the vehicle under this chapter.

2. That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways, providing such condition is revealed by a member of this department, or any peace officer.

3. That the department or the county treasurer has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle or that the granting of registration and issuance of a certificate of title would constitute a fraud against the rightful owner.

4. That the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state.

5. That the required fee has not been paid except as provided in section 321.48.

6. That the required use tax has not been paid.

7. If application for registration and certificate of title for a new vehicle is not accompanied by a manufacturer's or importer's certificate duly assigned.

8. If application for a transfer of registration and issuance of a certificate of title for a used vehicle registered in this state is not accompanied by a certificate of title duly assigned.

9. If application and supporting documents are insufficient to authorize the issuance of a certificate of title as provided by this chapter, except that an initial registration or transfer of registration may be issued as provided in section 321.23.

10. In the case of a mobile home, that taxes are owing under chapter 435 for a previous year.

11. In the case of a mobile home converted from real estate, real estate taxes which are delinquent.

12. If a commercial motor vehicle has been assigned to be operated by a commercial motor carrier whose ability to operate has been terminated or denied by a federal agency.

13. The department or the county treasurer knows that an applicant for renewal of a registration has a delinquent account, charge, fee, loan, taxes, or other indebtedness owed to or being collected by the state, from information received pursuant to section 421.17. An applicant may contest this action by requesting a contested case proceeding from the agency that referred the debt for collection pursuant to section 421.17. This subsection shall apply only to a

renewal of registration and shall not apply to the issuance of an original registration or to the issuance of a certificate of title.

The department or the county treasurer shall also refuse registration of a vehicle if the applicant for registration of the vehicle has failed to pay the required registration fees of any vehicle owned or previously owned when the registration fee was required to be paid by the applicant, and for which vehicle the registration was suspended or revoked under section 321.101, subsection 4, until the fees are paid together with any accrued penalties.

95 Acts, ch 55, §4; 95 Acts, ch 194, §2
 Subsection 13 effective January 1, 1996; 95 Acts, ch 194, §12
 NEW subsections 12 and 13

321.31 Records system.

A state and county records system shall be maintained in the following manner:

1. *State records system.* The department shall install and maintain a records system which shall contain the name and address of the vehicle owner, current and previous registration number, vehicle identification number, make, model, style, date of purchase, registration certificate number, maximum gross weight, weight, list price or value of the vehicle as fixed by the department, fees paid and date of payment. The records system shall also contain a record of the certificate of title including such information as the department deems necessary. The information to be kept in the records system shall be entered within forty-eight hours after receipt insofar as is practical. The records system shall constitute the permanent record of ownership of each vehicle titled under the laws of this state.

The department may make photostatic, microfilm, or other photographic copies of certificates of title, registration receipts, or other records, reports or documents which are required to be retained by the department. When copies have been made, the department may destroy the original records in such manner as prescribed by the director. The photostatic, microfilm, or other photographic copies, when no longer of use, may be destroyed in the manner prescribed by the director, subject to the approval of the state records commission. Photostatic, microfilm, or other photographic copies of records shall be admissible in evidence when duly certified and authenticated by the officer having custody and control of the copies of records. Records of vehicle certificates of title may be destroyed seven years after the date of issue.

The director shall maintain a records system of delinquent accounts owed to the state using information provided through the computerized data bank established in section 421.17. The department and county treasurers shall use the information maintained in the records system to determine if applicants for renewal of registration have delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to or being collected by the state as provided pursuant to section 421.17. The director

and the director of revenue and finance shall establish procedures for updating the delinquent accounts records to add and remove accounts, as applicable.

2. *County records system.* Each county treasurer's office shall maintain a county records system for vehicle registration and certificate of title documents. The records system shall consist of information from the certificate of title including the notation and cancellation of security interests, and information from the registration receipt. The information shall be maintained in a manner approved by the department.

Records of vehicle certificates of title for vehicles that are delinquent for five or more consecutive years may be destroyed by the county treasurer. Automated files, optical disks, microfiche records, and photostatic, microfilm or other photographic copies of records shall be admissible in evidence when duly certified and authenticated by the officer having custody and control of the records.

95 Acts, ch 194, §3
 Subsection 1, unnumbered paragraph 3, effective January 1, 1996; 95 Acts, ch 194, §12
 Subsection 1, NEW unnumbered paragraph 3

321.34 Plates or validation sticker furnished — retained by owner — special plates.

1. *Plates issued.* The county treasurer upon receiving application, accompanied by proper fee, for registration of a vehicle shall issue to the owner one registration plate for a motorcycle, motorized bicycle, truck tractor, trailer, or semitrailer and two registration plates for every other motor vehicle. The registration plates, including special registration plates, shall be assigned to the owner of a vehicle. When the owner of a registered vehicle transfers or assigns ownership of the vehicle to another person, the owner shall remove the registration plates from the vehicle. The owner shall forward the plates to the county treasurer where the vehicle is registered or the owner may have the plates assigned to another vehicle within thirty days after transfer, upon payment of the fees required by law. The owner shall immediately affix registration plates retained by the owner to another vehicle owned or acquired by the owner, providing the owner complies with section 321.46. The department shall adopt rules providing for the assignment of registration plates to the transferee of a vehicle for which a credit is allowed under section 321.46, subsection 6.

2. *Validation stickers.* In lieu of issuing new registration plates each registration year for a vehicle renewing registration, the department may reassign the registration plates previously issued to the vehicle and may adopt and prescribe annual validation stickers indicating payment of registration fees. The department shall issue two validation stickers for each set of registration plates. One sticker shall specify the year of expiration of the registration period. The second sticker shall specify the month of expiration of the registration period and need not be reissued annually. The month of registration shall not be required on registration plates or validation

stickers issued for vehicles registered under chapter 326. The stickers shall be displayed only on the rear registration plate, except that the stickers shall be displayed on the front registration plate of a truck-tractor.

The state department of transportation shall promulgate rules to provide for the placement of motor vehicle registration validation stickers on all registration plates issued for the motor vehicle when such validation stickers are issued in lieu of issuing new registration plates under the provisions of this section.

3. *Radio operators plates.* The owner of an automobile, light delivery truck, panel delivery truck, or pickup who holds an amateur radio license issued by the federal communications commission may, upon written application to the county treasurer accompanied by a fee of five dollars, order special registration plates bearing the call letters authorized the radio station covered by the person's amateur radio license. When received by the county treasurer, such special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. Not more than one set of special registration plates may be issued to an applicant. Said fee shall be in addition to and not in lieu of the fee for regular registration plates. Special registration plates must be surrendered upon expiration of the owner's amateur radio license and the owner shall thereupon be entitled to the owner's regular registration plates. The county treasurer shall validate special plates in the same manner as regular registration plates, upon payment of five dollars in addition to the regular annual registration fee.

4. *Multiyear plates.* In lieu of issuing annual registration plates for trailers and semitrailers, the department may issue a multiyear registration plate for a three-year period or a permanent registration plate for trailers and semitrailers licensed under chapter 326 upon payment of the appropriate registration fee. Payment of fees to the department for a permanent registration plate shall, at the option of the registrant, be made at five-year intervals or on an annual basis. Fees from three-year and five-year payments shall not be reduced or prorated.

5. *Personalized registration plates.*

a. Upon application and the payment of a fee of twenty-five dollars, the director may issue to the owner of a motor vehicle registered in this state or a trailer or travel trailer registered in this state, personalized registration plates marked with up to seven initials, letters, or combination of numerals and letters requested by the owner. However, personalized registration plates for motorcycles and motorized bicycles shall be marked with no more than six initials, letters, or combinations of numerals and letters. Upon receipt of the personalized registration plates, the applicant shall surrender the regular registration plates to the county treasurer. The fee for issuance of the personalized registration plates shall be in addition to the regular annual registration fee.

b. The county treasurer shall validate personalized registration plates in the same manner as regu-

lar registration plates are validated under this section at an annual fee of five dollars in addition to the regular annual registration fee. A person renewing a personalized registration plate within one month following the time requirements under section 321.40 may renew the personalized plate without paying the additional registration fee under paragraph "a" but shall pay the five-dollar fee in addition to the regular registration fee and any penalties subject to regular registration plate holders for late renewal.

c. The fees collected by the director under this section shall be paid to the treasurer of state and credited by the treasurer of state as provided in section 321.145.

6. *Sample vehicle registration plates.* Vehicle registration plates displaying the general design of regular registration plates, with the word "sample" displayed on the plate, may be furnished to any person upon payment of a fee of three dollars, except that such plates may be furnished to governmental agencies without cost. Sample registration plates shall not be attached to a vehicle moved on the highways of this state.

7. *Handicapped plates.* The owner of a motor vehicle subject to registration pursuant to section 321.109, subsection 1, light delivery truck, panel delivery truck, or pickup, who is a handicapped person, or who is the parent or guardian of a child who resides with the parent or guardian owner and who is a handicapped person, as defined in section 321L.1, may, upon written application to the department, order handicapped registration plates designed by the department bearing the international symbol of accessibility. The handicapped registration plates shall only be issued if the application is accompanied with a statement from a physician licensed under chapter 148, 149, 150, or 150A, or a chiropractor licensed under chapter 151, written on the physician's or chiropractor's stationery, stating the nature of the applicant's or the applicant's child's handicap and such additional information as required by rules adopted by the department, including proof of residency of a child who is a handicapped person. If the application is approved by the department the handicapped registration plates shall be issued to the applicant in exchange for the previous registration plates issued to the person. The department shall validate the handicapped plates in the same manner as regular registration plates are validated under this section at the regular annual registration fee. However, the handicapped plates shall not be renewed without the applicant furnishing evidence to the department that the owner of the motor vehicle or the owner's child is still a handicapped person as defined in section 321L.1, unless the applicant has previously provided satisfactory evidence to the department that the owner of the vehicle or the owner's child is permanently handicapped in which case the furnishing of additional evidence shall not be required for renewal. However, an owner who has a child who is a handicapped person shall provide

satisfactory evidence to the department that the handicapped child continues to reside with the owner. The handicapped registration plates shall be surrendered in exchange for regular registration plates when the owner of the motor vehicle or the owner's child no longer qualifies as a handicapped person as defined in section 321L.1 or when the owner's child who is a handicapped person no longer resides with the owner.

8. *Prisoner of war plates.* The owner of a motor vehicle subject to registration under section 321.109, subsection 1, light delivery truck, panel delivery truck or pickup who was a prisoner of war during the second world war at any time between December 7, 1941, and December 31, 1946, the Korean Conflict at any time between June 25, 1950, and January 31, 1955, or the Vietnam Conflict at any time between August 5, 1964, and June 30, 1973, all dates inclusive, may upon written application to the department, order special registration plates designed by the department in cooperation with the adjutant general which plates signify that the applicant was a prisoner of war as defined in this subsection. Each applicant applying for special registration plates under this subsection may purchase only one set of registration plates under this subsection. The application is subject to approval by the department, in consultation with the adjutant general, and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The special plates shall contain the letters "POW" and three numerals and are subject to an annual registration fee of fifteen dollars. The department shall validate the special plates in the same manner as regular registration plates are validated under this section.

9. *National guard plates.* The owner of a motor vehicle subject to registration pursuant to section 321.109, subsection 1, light delivery truck, panel delivery truck or pickup who is a member of the national guard, as defined in chapter 29A, may upon written application to the department, order special registration plates designed by the department in co-operation with the adjutant general which plates signify that the applicant is a member of the national guard. The application shall be approved by the department, in consultation with the adjutant general, and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The fee for the special plates shall be five dollars which shall be in addition to the regular annual registration fee. The department shall validate the special plates in the same manner as regular registration plates are validated under this section at the regular annual registration fee. Special registration plates shall be surrendered in exchange for regular registration plates upon termination of the owner's membership in the active national guard.

10. *Collegiate plates.*

a. Upon application and payment of the proper fees, the director may issue to the owner of a motor

vehicle, trailer, or travel trailer registered in this state, collegiate registration plates. Upon receipt of the collegiate registration plates, the applicant shall surrender the regular registration plates to the county treasurer.

b. Collegiate registration plates shall be designed for each of the three state universities. The collegiate registration plates shall be designated as follows:

(1) The letters "ISU" followed by a four-digit number all in cardinal on a gold background for Iowa state university of science and technology.

(2) The letters "UNI" followed by a four-digit number all in purple on a gold background for the university of northern Iowa.

(3) The letters "UI" followed by a four-digit number all in black on a gold background for the state university of Iowa.

(4) In lieu of the letter number designation provided under subparagraphs (1) through (3), the collegiate registration plates may be designated in the manner provided for personalized registration plates under subsection 5, paragraph "a", in the colors designated for the respective universities under subparagraphs (1) through (3).

c. The fees for a collegiate registration plate are as follows:

(1) A registration fee of twenty-five dollars.

(2) A special collegiate registration fee of twenty-five dollars.

These fees are in addition to the regular annual registration fee. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited by the treasurer of state to the road use tax fund. Notwithstanding section 423.24 and prior to the revenues being credited to the road use tax fund under section 423.24, subsection 1, paragraph "d", the treasurer of state shall credit monthly from those revenues respectively, to Iowa state university of science and technology, the university of northern Iowa, and the state university of Iowa, the amount of the special collegiate registration fees collected in the previous month for collegiate registration plates designed for the university. The moneys credited are appropriated to the respective universities to be used for scholarships for students attending the universities.

d. The county treasurer shall validate collegiate registration plates in the same manner as regular registration plates are validated under this section at an annual fee of five dollars in addition to the regular annual registration fee.

e. A collegiate registration plate shall not be issued if its combination of alphanumeric characters are identical to those contained on a current personalized registration plate issued under subsection 5. However, the owner of a motor vehicle who has a personalized registration plate issued for the motor vehicle may, after proper application and payment of fees, be issued a collegiate registration plate containing the same alphanumeric characters as those on the personalized plate. Upon receipt of the collegiate registration plates, the owner shall surrender the

personalized registration plates to the county treasurer.

11. *Congressional medal of honor plates.* The owner of a motor vehicle subject to registration under section 321.109, subsection 1, light delivery truck, panel delivery truck or pickup who has been awarded the congressional medal of honor may, upon written application to the department, order special registration plates which shall be red, white, and blue in color and shall bear an emblem of the congressional medal of honor and an identifying number. Each applicant applying for special registration plates under this subsection may purchase only one set of registration plates under this subsection. The application is subject to approval by the department and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The special plates are subject to an annual registration fee of fifteen dollars. The department shall validate the special plates in the same manner as regular registration plates are validated under this section. The department shall not issue special registration plates until service organizations in the state have furnished the department either the special dies or the cost of the special dies necessary for the manufacture of the special registration plate.

12. *Pearl Harbor plates.* Effective January 1, 1990, the owner of a motor vehicle subject to registration under section 321.109, subsection 1, light delivery truck, panel delivery truck or pickup who was at Pearl Harbor, Hawaii, as a member of the armed services of the United States on December 7, 1941, may, upon written application to the department, order special registration plates. The special registration plates shall bear the notation or emblem reading "PEARL HARBOR SURVIVOR, DECEMBER 7, 1941" followed by four identifying letters or numbers. Each applicant applying for special registration plates under this subsection may purchase only one set of registration plates. The application is subject to approval by the department. Upon receipt of the special registration plates, the applicant shall surrender the regular registration plates to the county treasurer. The fee for the issuance of the special registration plates is twenty-five dollars which shall be in addition to the regular annual registration fee. Seriously disabled veterans who are exempted from payment of the annual registration fee under section 321.105, shall pay only the twenty-five dollar fee for issuance of the special registration plates. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section with no additional registration fee being required other than the regular annual registration fee.

13. *Purple heart plates.* The owner of a motor vehicle subject to registration pursuant to section 321.109, subsection 1, light delivery truck, panel delivery truck, or pickup who was awarded a purple heart medal by the United States government for wounds received in military or naval combat against

an armed enemy of the United States, may upon written application to the department and presentation of satisfactory proof of the award of the purple heart medal, order special registration plates. The design of the plates shall include a representation of a purple heart medal and ribbon centered on the left side of the plate and the words "Combat Wounded" centered on the bottom of the plate. The plates shall be numbered in sequence beginning with 00001. The application is subject to approval by the department in consultation with the adjutant general. The special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The fee for the purple heart plates shall be twenty-five dollars which shall be in addition to the regular annual registration fee. The department shall validate the special plates in the same manner as regular registration plates are validated under this section.

14. *Sesquicentennial plates.*

a. Upon application and payment of the proper fees, the director may issue sesquicentennial plates to the owner of a motor vehicle subject to registration under section 321.109, subsection 1, light delivery truck, panel delivery truck, pickup, motor home, multipurpose vehicle, or travel trailer.

b. In lieu of the letter number designation, the sesquicentennial plates may be designated in the manner provided for personalized registration plates under subsection 5, paragraph "a". A sesquicentennial plate shall not be issued if its combination of alphanumeric characters is identical to those contained on a current personalized registration plate issued under subsection 5, or a personalized collegiate registration plate issued under subsection 10. However, the owner of a motor vehicle who has either personalized registration plates or personalized collegiate registration plates issued for a vehicle may, after proper application and payment of fees, be issued a sesquicentennial registration plate containing the same alphanumeric characters as those on the personalized registration plates or personalized collegiate registration plates.

c. The special sesquicentennial fee for letter number designated sesquicentennial plates is fifteen dollars. The fee for personalized sesquicentennial plates is twenty-five dollars which shall be paid in addition to the special sesquicentennial fee of fifteen dollars. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.24, and prior to the crediting of revenues to the road use tax fund under section 423.24, subsection 1, paragraph "d", the treasurer of state shall credit monthly from those revenues to the sesquicentennial fund established in section 7G.1, the amount of the special sesquicentennial fees collected in the previous month for the sesquicentennial plates.

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration receipt and plates to the county treasurer. The county treasurer shall validate the special registra-

tion plates in the same manner as regular registration plates are validated under this section. The annual special sesquicentennial fee for letter number designated plates is ten dollars which shall be paid in addition to the regular annual registration fee. The annual fee for personalized sesquicentennial plates is five dollars which shall be paid in addition to the annual special sesquicentennial fee and the regular annual registration fee. The annual special sesquicentennial fee shall be credited as provided under paragraph "c".

e. The sesquicentennial plate series shall not be available to new applicants or renewable after January 1, 1997. Upon the expiration of the series, the owner of a motor vehicle who has personalized sesquicentennial plates may, after proper application and payment of fees, be issued either personalized registration plates or personalized collegiate registration plates containing the same alphanumeric characters as those on the personalized sesquicentennial plates.

15. *Leased vehicles.* Registration plates under this section may be issued to the lessee of a motor vehicle if the lessee provides evidence of a lease for a period of more than sixty days and if the lessee complies with the requirements, under this section, for issuance of the specific registration plates.

16. *Fire fighter plates.* The owner of a motor vehicle subject to registration pursuant to section 321.109, subsection 1, light delivery truck, panel delivery truck, pickup, motor home, multipurpose vehicle, or travel trailer who is a current or former member of a paid or volunteer fire department, may upon written application to the department, order special registration plates, designed by the department in cooperation with representatives designated by the Iowa fire fighters' associations, which plates signify that the applicant is a current or former member of a paid or volunteer fire department. The application shall be approved by the department, in consultation with representatives designated by the Iowa fire fighters' associations, and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The fee for the special plates shall be twenty-five dollars which shall be in addition to the regular annual registration fee. The department shall validate the special plates in the same manner as regular registration plates are validated under this section at the regular annual registration fee.

17. *Natural resources plates.*

a. Upon application and payment of the proper fees, the director may issue natural resources plates to the owner of a motor vehicle subject to registration under section 321.109, subsection 1, light delivery truck, panel delivery truck, pickup, motor home, multipurpose vehicle, or travel trailer.

b. Natural resources plates shall be designed by the department in cooperation with the department of natural resources which design shall include on the plate the name of the county where the vehicle is registered.

c. The special natural resources fee for letter number designated natural resources plates is thirty-five dollars. The fee for personalized natural resources plates is forty-five dollars which shall be paid in addition to the special natural resources fee of thirty-five dollars. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.24, and prior to the crediting of revenues to the road use tax fund under section 423.24, subsection 1, paragraph "d", the treasurer of state shall credit monthly from those revenues to the Iowa resources enhancement and protection fund created pursuant to section 455A.18, the amount of the special natural resources fees collected in the previous month for the natural resources plates.

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration receipt and plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special natural resources fee for letter number designated plates is ten dollars which shall be paid in addition to the regular annual registration fee. The annual fee for personalized natural resources plates is five dollars which shall be paid in addition to the annual special natural resources fee and the regular annual registration fee. The annual special natural resources fee shall be credited as provided under paragraph "c".

95 Acts, ch 118, §8, 9

For future amendments effective January 1, 1997, to subsection 2 and section 321.166, subsection 7, pertaining to the issuance of one validation sticker containing both the month and year of expiration, see 95 Acts, ch 118, §7, 20, and 40

Subsections 4 and 7 amended

321.35 Plates — reflective material — bidding procedures.

All motor vehicle registration plates shall be treated with a reflective material according to specifications proposed by the director and approved by the commission.

The department shall not enter into any contract requiring an expenditure of at least five hundred thousand dollars for the manufacture of motor vehicle registration plates to be reissued to owners under this chapter unless competitive bidding procedures as provided in chapter 18 are followed.

95 Acts, ch 118, §10
Section amended

321.40 Application for renewal — notification — reasons for refusal.

Application for renewal of a vehicle registration shall be made on or after the first day of the month of expiration of registration and up to and including the last day of the month following the month of expiration of registration. The registration shall be renewed upon payment of the appropriate registration fee.

On or before the fifteenth day of the month of expiration of a vehicle's registration the county treasurer shall send a statement by mail of fees due to the appropriate owner of record. The statement shall be mailed to the most current address of record, showing information sufficient to identify the vehicle and a listing of the various fees as appropriate. Failure to receive a statement shall have no effect upon the accrual of penalty at the appropriate date.

Registration receipts issued for renewals shall have the word "renewal" imprinted thereon and, if the owner making a renewal application has been issued a certificate of title, the title number shall appear on the registration receipt. All registration receipts for renewals shall be typewritten or printed by other mechanical means. The applicant shall receive a registration receipt.

The county treasurer shall refuse to renew the registration of a vehicle registered to a person when notified that the person has not paid restitution as defined under section 910.1, subsection 3, to the clerk of the court located within that county. Each clerk of court subject to this section shall, by the last day of each month, notify the county treasurer of that county of all persons who owe delinquent restitution. Immediately upon the cancellation or satisfaction of the restitution the clerk of court shall notify the county treasurer if that person's name appeared on the last list furnished to the county treasurer. This paragraph does not apply to the transfer of a registration or the issuance of a new registration. The provisions of this paragraph are applicable to counties with a population of twenty-five thousand or more. The provisions of this paragraph shall be applicable to any county with a population of less than twenty-five thousand upon the adoption of a resolution by the county board of supervisors so providing.

The county treasurer shall refuse to renew the registration of a vehicle registered to the applicant for renewal of registration if the applicant has failed to pay any local vehicle taxes due in that county on that vehicle or any other vehicle owned or previously owned by the applicant until such local vehicle taxes are paid.

The county treasurer shall refuse to renew the registration of a vehicle registered to the applicant if the county treasurer knows that the applicant has a delinquent account, charge, fee, loan, taxes, or other indebtedness owed to or being collected by the state, from information provided pursuant to section 421.17. An applicant may contest this action by requesting a contested case proceeding from the agency that referred the debt for collection pursuant to section 421.17.

When application is made for the renewal of a motor vehicle registration on or after December 1, 1982, the person in whose name the registration is recorded shall notify the county treasurer of the type of fuel used by the vehicle if the type of fuel used is different from that which is shown on the registration receipt. If a motor vehicle registration indicates that the vehicle uses or may use a special fuel as

defined in chapter 452A the county treasurer shall issue a special fuel user identification sticker. The person who owns or controls the vehicle shall affix the sticker in a prominent place on the vehicle adjacent to the place where the special fuel is delivered into the motor vehicle fuel supply tank.

95 Acts, ch 57, §1; 95 Acts, ch 169, §1; 95 Acts, ch 194, §4
1995 amendments to unnumbered paragraph 4 and unnumbered paragraph 6 effective January 1, 1996; 95 Acts, ch 169, §10; 95 Acts, ch 194, §12
Unnumbered paragraphs 2 and 4 amended
NEW unnumbered paragraph 6

321.45 Title must be transferred with vehicle.

1. No manufacturer, importer, dealer or other person shall sell or otherwise dispose of a new vehicle subject to registration under the provisions of this chapter to a dealer to be used by such dealer for purposes of display and lease or resale without delivering to such dealer a manufacturer's or importer's certificate duly executed and with such assignments thereon as may be necessary to show title in the purchaser thereof; nor shall such dealer purchase or acquire a new vehicle that is subject to registration without obtaining from the seller thereof such manufacturer's or importer's certificate. In addition to the assignments stated herein, such manufacturer's or importer's certificate shall contain thereon the identification and description of the vehicle delivered and the name and address of the dealer to whom said vehicle was originally sold over the signature of an authorized official of the manufacturer or importer who made the original delivery.

For each new mobile home, travel trailer and camping trailer said manufacturer's or importer's certificate shall also contain thereon the exterior length and exterior width of said vehicle not including any area occupied by any hitching device, and the manufacturer's shipping weight.

Completed motor vehicles, other than class "B" motor homes, which are converted, modified or altered shall retain the identity and model year of the original manufacturer of the vehicle. Motor homes and all other motor vehicles manufactured from chassis or incomplete motor vehicles manufactured by another may have the identity and model year assigned by the final manufacturer.

2. No person shall acquire any right, title, claim or interest in or to any vehicle subject to registration under this chapter from the owner thereof except by virtue of a certificate of title issued or assigned to the person for such vehicle or by virtue of a manufacturer's or importer's certificate delivered to the person for such vehicle; nor shall any waiver or estoppel operate in favor of any person claiming title to or interest in any vehicle against a person having possession of the certificate of title or manufacturer's or importer's certificate for such vehicle for a valuable consideration except in case of:

a. The perfection of a lien or security interest by notation on the certificate of title as provided in section 321.50, or

b. The perfection of a security interest in new or used vehicles held as inventory for sale as provided

in Uniform Commercial Code, chapter 554, Article 9, or

c. A dispute between a buyer and the selling dealer who has failed to deliver or procure the certificate of title as promised, or

d. Except for the purposes of section 321.493. Except in the above enumerated cases, no court in any case at law or equity shall recognize the right, title, claim or interest of any person in or to any vehicle subject to registration sold or disposed of, or mortgaged or encumbered, unless evidenced by a certificate of title or manufacturer's or importer's certificate duly issued or assigned in accordance with the provisions of this chapter.

3. Upon the transfer of any registered vehicle, the owner, except as otherwise provided in this chapter, shall endorse an assignment and warranty of title upon the certificate of title for such vehicle with a statement of all liens and encumbrances thereon, and the owner shall deliver the certificate of title to the purchaser or transferee at the time of delivering the vehicle except as otherwise provided in this chapter. The owner shall indicate to the transferee the name of the county in which the vehicle was last registered and the registration expiration date.

4. A mobile home dealer, as defined in section 322B.2, shall within fifteen days of acquiring a used mobile or manufactured home, titled in Iowa, apply for and obtain from the county treasurer of the dealer's county of residence a new certificate of title for the mobile or manufactured home.

95 Acts, ch 57, §2
Subsection 4 amended

321.47 Transfers by operation of law.

If ownership of a vehicle is transferred by operation of law upon inheritance, devise or bequest, dissolution decree, order in bankruptcy, insolvency, replevin, foreclosure or execution sale, abandoned vehicle sale, or when the engine of a motor vehicle is replaced by another engine, or a vehicle is sold or transferred to satisfy an artisan's lien as provided in chapter 577, a landlord's lien as provided in chapter 570, a storage lien as provided in chapter 579, a judgment in an action for abandonment of a mobile home as provided in chapter 555B, or repossession is had upon default in performance of the terms of a security agreement, the county treasurer in the transferee's county of residence, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof to the county treasurer of ownership and right of possession to the vehicle and upon payment of a fee of ten dollars and the presentation of an application for registration and certificate of title, may issue to the applicant a registration card for the vehicle and a certificate of title to the vehicle. A person entitled to ownership of a vehicle under a decree of dissolution shall surrender a certified copy of the dissolution and upon fulfilling the other requirements of this chapter is entitled to a certificate of title and registration receipt issued in the person's name.

The persons entitled under the laws of descent and distribution of an intestate's property to the possession and ownership of a vehicle owned in whole or in part by a decedent, upon filing an affidavit stating the name and date of death of the decedent, the right to possession and ownership of the persons filing the affidavit, and that there has been no administration of the decedent's estate, which instrument shall also contain an agreement to indemnify creditors of the decedent who would be entitled to levy execution upon the motor vehicle to the extent of the value of the motor vehicle, are entitled upon fulfilling the other requirements of this chapter, to the issuance of a registration card for the interest of the decedent in the vehicle and a certificate of title to it. If a decedent dies testate, and either the will is not probated or is admitted to probate without administration, the persons entitled to the possession and ownership of a vehicle owned in whole or in part by the decedent may file an affidavit, and upon fulfilling the other requirements of this chapter, are entitled to the issuance of a registration card for the interest of the decedent in the vehicle and a certificate of title to the vehicle. The affidavit shall contain the same information and indemnity agreement as is required in cases of intestacy pursuant to this section. No requirement of chapter 450 or 451 shall be considered satisfied by the filing of the affidavit provided for in this section. If, from the records in the office of the county treasurer, there appear to be any liens on the vehicle, the certificate of title shall contain a statement of the liens unless the application is accompanied by proper evidence of their satisfaction or extinction. Evidence of extinction may consist of, but is not limited to, an affidavit of the applicant stating that a security interest was foreclosed as provided in chapter 554, article 9, part 5.

Whenever ownership of a vehicle is transferred under the provisions of this section the registration plates shall be removed and forwarded to the county treasurer of the county where the vehicle is registered or to the department if the vehicle is owned by a nonresident. Upon transfer the vehicle shall not be operated upon the highways of this state until the person entitled to possession of the vehicle applies for and obtains registration for the vehicle.

95 Acts, ch 118, §11
Unnumbered paragraph 1 divided and amended

321.52 Out-of-state sales — junked, dismantled, wrecked, or salvage vehicles.

1. When a vehicle is sold outside the state for purposes other than for junk the owner, dealer or otherwise, shall detach the registration plates and registration card and shall indicate on the reverse side of such registration card the name and address of the foreign purchaser or transferee over the person's signature. The owner shall surrender the registration plates and registration card to the county treasurer, unless the registration plates are properly attached to another vehicle, who shall cancel the records and shall destroy the registration plates and

forward the registration card to the department. The department shall make a notation on the records of the out-of-state sale, and, after a reasonable period, may destroy the files to that particular vehicle. The department is not authorized to make a refund of license fees on a vehicle sold out of state unless it receives the registration card completed as provided in this section.

2. The purchaser or transferee of a motor vehicle for which a certificate of title is issued which is sold for scrap or junk shall surrender the certificate of title to the county treasurer of the county of residence of the transferee within fifteen days after assignment of the certificate of title. The county treasurer shall issue to such person without fee a junking certificate. A junking certificate shall authorize the holder to possess, transport or transfer by endorsement the ownership of the junked vehicle. A certificate of title shall not again be issued for the vehicle subsequent to the issuance of a junking certificate except as provided in subsection 3. The county treasurer shall cancel the record of the vehicle and forward the certificate of title to the department. The junking certificate shall be of a form to allow for the assignment of ownership of the vehicle. The junking certificate shall provide a space for the notation of the transferee of the component parts of the vehicle transferred by the owner of the vehicle.

3. When a vehicle for which a certificate of title is issued is junked or dismantled by the owner, the owner shall detach the registration plates and surrender the plates to the county treasurer, unless the plates are properly assigned to another vehicle. The owner shall also surrender the certificate of title to the county treasurer. Upon surrendering the certificate of title, the county treasurer shall issue to the person, without fee, a junking certificate, which shall authorize the holder to possess, transport or transfer ownership of the junked vehicle by endorsement of the junking certificate. The county treasurer shall hold the surrendered certificate of title, registration receipt and, if applicable, the registration plates for a period of fourteen days following the issuance of a junking certificate under this subsection. Within the fourteen-day period the person who was issued the junking certificate and to whom the vehicle was titled or assigned may surrender to the county treasurer the junking certificate, and upon the person's payment of appropriate fees and taxes and payment of any credit for registration fees received by the person for the vehicle under section 321.46, subsection 3, the county treasurer shall issue to the person a certificate of title for the vehicle. After the expiration of the fourteen-day period, a county treasurer shall not issue a certificate of title for a junked vehicle for which a junking certificate is issued. The county treasurer shall cancel the record of the vehicle and forward the certificate of title to the department.

However, upon application the department upon a showing of good cause may issue a certificate of title after the fourteen-day period for a junked vehicle for which a junking certificate has been issued. For

purposes of this subsection, "good cause" means that the junking certificate was obtained by mistake or inadvertence. If a person's application to the department is denied, the person may make application for a certificate of title under the bonding procedure as provided in section 321.24, if the vehicle qualifies as an antique vehicle under section 321.115, subsection 1, or the person may seek judicial review as provided under sections 17A.19 and 17A.20.

4. a. A vehicle rebuilder or a person engaged in the business of buying, selling, or exchanging vehicles of a type required to be registered in this state, upon acquisition of a wrecked or salvage vehicle, shall surrender the certificate of title or manufacturer's or importer's statement of origin properly assigned, together with an application for a salvage certificate of title to the county treasurer of the county of residence of the purchaser or transferee within fifteen days after the date of assignment of the certificate of title for the wrecked or salvage motor vehicle. This subsection applies only to vehicles with a fair market value of five hundred dollars or more, based on the value before the vehicle became wrecked or salvage. Upon payment of a fee of two dollars, the county treasurer shall issue a salvage certificate of title which shall bear the word "SALVAGE" stamped or printed on the face of the title in a manner prescribed by the department. A salvage certificate of title may be assigned to an educational institution, a new motor vehicle dealer licensed under chapter 322, a person engaged in the business of purchasing bodies, parts of bodies, frames or component parts of vehicles for sale as scrap metal, a salvage pool, or an authorized vehicle recycler licensed under chapter 321H. An authorized vehicle recycler licensed under chapter 321H or a new motor vehicle dealer licensed under chapter 322 may assign a salvage certificate of title to any person. A vehicle on which ownership has transferred to an insurer of the vehicle, as a result of a settlement with the owner of the vehicle arising out of damage to, or unrecovered theft of the vehicle, shall be deemed to be a wrecked or salvage vehicle and the insurer shall comply with this subsection to obtain a salvage certificate of title within fifteen days after the date of assignment of the certificate of title of the vehicle.

b. When a wrecked or salvage vehicle has been repaired, the owner may apply for a regular certificate of title by paying the appropriate fees and surrendering the salvage certificate of title and a properly executed salvage theft examination certificate. The county treasurer shall issue a regular certificate of title which shall bear a designation stamped or printed on the face of the title and stamped and printed on the registration receipt indicating that the vehicle was previously titled on a salvage certificate of title in a form approved by the department. This designation shall be included on every Iowa certificate of title and registration receipt issued thereafter for the vehicle. The stamped designation shall be in black and shall be in letters no bigger than sixteen point type and located on the center of the right side of the registration receipt.

However, if ownership of a stolen vehicle has been transferred to an insurer organized under the laws of this state or admitted to do business in this state, or if the transfer was the result of a settlement with the owner of the vehicle arising from damage to or the unrecovered theft of the vehicle, and if the insurer certifies to the county treasurer on a form approved by the department that the insurance company has received one or more written estimates which state that the retail cost of repairs including labor, parts, and other materials of all damage to the vehicle is less than three thousand dollars, the county treasurer shall issue to the insurance company the regular certificate of title and registration receipt without this designation.

c. A salvage theft examination shall be made by a peace officer who has been specially certified and recertified when required by the Iowa law enforcement academy to do salvage theft examinations. The Iowa law enforcement academy shall determine standards for training and certification, conduct training, and may approve alternative training programs which satisfy the academy's standards for training and certification. The owner of the salvage vehicle shall make the vehicle available for examination at a time and location designated by the peace officer doing the examination. The owner may obtain a permit to drive the vehicle to and from the examination location by submitting a repair affidavit to the agency performing the examination stating that the vehicle is reasonably safe for operation and listing the repairs which have been made to the vehicle. The owner must be present for the examination and have available for inspection the salvage title, bills of sale for all essential parts changed, and the repair affidavit. The examination shall be for the purposes of determining whether the vehicle or repair components have been stolen. The examination is not a safety inspection and a signed salvage theft examination certificate shall not be construed by any court of law to be a certification that the vehicle is safe to be operated. There shall be no cause of action against the peace officer or the agency conducting the examination or the county treasurer for failure to discover or note safety defects. If the vehicle passes the theft examination, the peace officer shall indicate that the vehicle passed examination on the salvage theft examination certificate. The permit and salvage theft examination certificate shall be on controlled forms prescribed and furnished by the department. The owner shall pay a fee of thirty dollars upon completion of the examination. The agency performing the examinations shall retain twenty dollars of the fee and shall pay five dollars of the fee to the department and five dollars of the fee to the treasurer of state for deposit in the general fund of the state. Moneys deposited to the general fund under this paragraph are subject to the requirements of section 8.60 and shall be used by the Iowa law enforcement academy to provide for the special training, certification, and recertification of officers as required by this subsection.

The provision of this subsection requiring a salvage theft examination by a peace officer specially certified or recertified by the Iowa law enforcement academy to do salvage theft examinations shall become effective July 1, 1989. Salvage theft examinations conducted before July 1, 1989, shall be made by peace officers authorized to do so by the state department of transportation or the department of public safety who are qualified, as determined by those agencies, to conduct salvage theft examinations. The state department of transportation shall adopt rules in accordance with chapter 17A to carry out this section, including transition rules allowing for salvage theft examinations prior to July 1, 1989.

d. For purposes of this subsection a "wrecked or salvage vehicle" means a damaged motor vehicle subject to registration and having a gross vehicle weight rating of less than thirty thousand pounds, for which the cost of repair exceeds fifty percent of the fair market value of the vehicle, as determined in accordance with rules adopted by the department, before it became damaged.

95 Acts, ch 45, §2, 3

Subsection 3, unnumbered paragraph 2 amended

Subsection 4, paragraph b amended

321.52A Certificate of title surcharge.

In addition to the fee required for the issuance of a certificate of title under section 321.20, 321.20A, 321.23, 321.42, 321.46, 321.47, 321.48, 321.50, or 321.52, a surcharge of five dollars shall be required. Of each surcharge collected under those sections, the county treasurer shall remit five dollars to the office of treasurer of state for deposit in the general fund of the state.

95 Acts, ch 118, §12

Section amended

321.69 Damage disclosure statement.

1. A certificate of title shall not be issued for a motor vehicle unless a damage disclosure statement has been made by the transferor of the vehicle and is furnished with the application for certificate of title. A damage disclosure statement must be provided by the transferor to the transferee in a transfer of ownership of a motor vehicle. The new certificate of title and registration receipt shall state on the face of the title the total cumulative dollar amount of damage reported by owners prior to the owner listed on the front of the title.

2. The damage disclosure statement required by this section shall, at a minimum, state the total retail dollar amount of all damage to the vehicle during the period of the transferor's ownership of the vehicle and whether the transferor knows if the vehicle was titled as a salvage or flood vehicle in this or any other state prior to the transferor's ownership of the vehicle. For the purposes of this section, "damage" refers to damage to the vehicle caused by fire, vandalism, collision, weather, falling objects, submersion in water, or flood, where the cost of repair is three thousand dollars or more per incident, but does not include normal wear and tear, glass damage, me-

chanical repairs or electrical repairs that have not been caused by fire, vandalism, collision, weather, falling objects, submersion in water, or flood. "Damage" does not include the cost of repairing, replacing, or reinstalling an inflatable restraint system. A determination of the amount of damage to a vehicle shall be based on estimates of the retail cost of repairing the vehicle, including labor, parts, and other materials, if the vehicle has not been repaired or on the actual retail cost of repair, including labor, parts, and other materials, if the vehicle has been repaired. Only individual incidents in which the retail cost of repairs is three thousand dollars or more are required to be disclosed by this section. If the vehicle has incurred damage of three thousand dollars or more per incident in more than one incident, the damage amounts must be combined and disclosed as the total of all separate incidents.

3. The damage disclosure statement shall be provided by the transferor to the transferee at or before the time of sale. If the transferor is not a resident of this state the transferee shall not be required to submit a damage disclosure statement from the transferor with the transferee's application for title unless the state of the transferor's residence requires a damage disclosure statement. However, the transferee shall submit a damage disclosure statement with the transferee's application for title indicating whether a salvage or rebuilt title had ever existed for the vehicle, whether the vehicle had incurred prior damage of three thousand dollars or more per incident, and the year, make, and vehicle identification number of the motor vehicle.

4. A lessee who has executed a lease as defined in section 321F.1 shall provide a damage disclosure statement to the lessor at the termination of the lease. The damage disclosure statement shall be made on a separate disclosure document and shall state the total dollar amount of all damage to the vehicle which occurred during the term of the lease. The lessee's damage disclosure statement shall not be submitted with the application for title, but the lessor shall retain the lessee's damage disclosure statement for five years following the date of the statement.

5. The department shall retain each damage disclosure statement received and copies shall be available to the public and the attorney general upon request.

6. Authorized vehicle recyclers licensed under chapter 321H and motor vehicle dealers licensed under chapter 322 shall maintain copies of all damage disclosure statements where the recycler or dealer is either the transferor or the transferee for five years following the date of the statement. The copies shall be made available to the department or the attorney general upon request.

7. The damage disclosure statements shall be made on the back of the certificate of title if the title is available to the transferor at the time of sale. If the title is not available at the time of sale or if the face of the transferor's Iowa title contains no indication

that the vehicle was previously salvaged or titled as salvaged or rebuilt and the transferor knows or reasonably should know that the vehicle was previously salvaged or titled as salvaged or rebuilt in another state, the transferor shall make the disclosure on a separate disclosure document. The damage disclosure statement forms shall be as approved by the department. The treasurer shall not accept a damage disclosure statement and issue a title unless the back of the title or separate disclosure document has been fully completed and signed and dated by the transferee and the transferor, if applicable.

8. A person, authorized vehicle recycler licensed under chapter 321H, or motor vehicle dealer licensed under chapter 322 shall not be liable to a subsequent owner of a vehicle because a prior owner or lessee gave a false or inaccurate damage disclosure statement or failed to disclose that the vehicle had previously been damaged and repaired or had been titled on a salvage or rebuilt certificate of title unless the person, recycler, or dealer knew or reasonably should have known that the prior owner or lessee gave a false or inaccurate damage disclosure statement or failed to disclose that the vehicle had been damaged and repaired or had been titled on a salvage or rebuilt certificate of title.

9. This section does not apply to motor trucks and truck tractors with a gross vehicle weight rating of sixteen thousand pounds or more, vehicles more than nine model years old, motorcycles, motorized bicycles, and special mobile equipment. The section does apply to motor homes.

10. A person who knowingly makes a false damage disclosure statement commits a fraudulent practice. Failure of a person, authorized vehicle recycler licensed under chapter 321H, or motor vehicle dealer licensed under chapter 322, to comply with any duty imposed by this section constitutes a violation of section 714.16, subsection 2, paragraph "a".

11. The department shall adopt rules as necessary to implement this section.

95 Acts, ch 45, §4, 5

For effective date of 1995 amendments to subsections 2 and 9, see 95 Acts, ch 45, §10

Subsection 2 amended

NEW subsection 4 and former subsections 4-10 renumbered as 5-11

Subsections 8 and 9 amended

321.89 Abandoned vehicles.

1. *Definitions.* As used in this section and sections 321.90 and 321.91 unless the context otherwise requires:

a. "Police authority" means the Iowa highway safety patrol, any law enforcement agency of a county or city or any special security officer employed by the state board of regents under section 262.13.

b. "Abandoned vehicle" means any of the following:

(1) A vehicle that has been left unattended on public property for more than forty-eight hours and lacks current registration plates or two or more wheels or other parts which renders the vehicle totally inoperable, or

(2) A vehicle that has remained illegally on public property for more than seventy-two hours, or

(3) A vehicle that has been unlawfully parked on private property or has been placed on private property without the consent of the owner or person in control of the property for more than twenty-four hours, or

(4) A vehicle that has been legally impounded by order of a police authority and has not been reclaimed for a period of ten days, or

(5) Any vehicle parked on the highway determined by a police authority to create a hazard to other vehicle traffic.

(6) A vehicle that has been impounded pursuant to section 321J.4B by order of the court and whose owner has not paid the impoundment fees after notification by the person or agency responsible for carrying out the impoundment order.

However, a vehicle shall not be considered abandoned for a period of five days if its owner or operator is unable to move the vehicle and notifies the police authority responsible for the geographical location of the vehicle and requests assistance in the removal of the vehicle.

c. *"Demolisher"* means any city or public agency organized for the disposal of solid waste, or any person whose business it is to convert a vehicle to junk, processed scrap or scrap metal, or otherwise to wreck, or dismantle vehicles.

2. *Authority to take possession of abandoned vehicles.* A police authority may, and on the request of any other authority having the duties of control of highways or traffic, shall take into custody any abandoned vehicle on public property and may take into custody any abandoned vehicle on private property. A police authority taking into custody an abandoned vehicle determined to create a traffic hazard shall report the reasons constituting the hazard in writing to the appropriate authority having duties of control of the highway. The police authority may employ its own personnel, equipment and facilities or hire other personnel, equipment and facilities for the purpose of removing, preserving, storing, or disposing abandoned vehicles.

3. *Notification of owner, lienholders, and other claimants.*

a. A police authority which takes into custody an abandoned vehicle shall notify, within twenty days, by certified mail, the last known registered owner of the vehicle, all lienholders of record, and any other known claimant to the vehicle or to personal property found in the vehicle, addressed to their last known addresses of record, that the abandoned vehicle has been taken into custody. Notice shall be deemed given when mailed. The notice shall describe the year, make, model, and serial number of the vehicle, describe the personal property found in the vehicle, set forth the location of the facility where the vehicle is being held, and inform the persons receiving the notice of their right to reclaim the vehicle and personal property within twenty-one days after the effective date of the notice upon payment of all towing,

preservation, and storage charges resulting from placing the vehicle in custody and upon payment of the costs of notice required pursuant to this subsection. The notice shall also state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided shall be deemed a waiver by the owner and all lienholders of all right, title, claim and interest in the vehicle and that failure to reclaim the vehicle is deemed consent to the sale of the vehicle at a public auction or disposal of the vehicle to a demolisher. The notice shall state that any person claiming rightful possession of the vehicle or personal property who disputes the planned disposition of the vehicle or property by the police authority or of the assessment of fees and charges provided by this section may ask for an evidentiary hearing before the police authority to contest those matters. If the persons receiving the notice do not ask for a hearing or exercise their right to reclaim the vehicle within the twenty-one-day reclaiming period, the owner and lienholders shall no longer have any right, title, claim, or interest in or to the vehicle. No court in any case in law or equity shall recognize any right, title, claim, or interest of the owner and lienholders after the expiration of the twenty-one-day reclaiming period.

b. If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the area where the vehicle was abandoned shall be sufficient to meet all requirements of notice under this section. The published notice may contain multiple listings of abandoned vehicles but shall be published within the same time requirements and contain the same information as prescribed for mailed notice in subsection 3, paragraph "a" of this section.

c. The owner or any lienholders may, by written request delivered to the police authority prior to the expiration of the twenty-one-day reclaiming period, obtain an additional fourteen days within which the vehicle may be reclaimed.

4. *Auction of abandoned vehicles.* If an abandoned vehicle has not been reclaimed as provided for in subsection 3, the police authority shall make a determination as to whether or not the vehicle shall be sold for use upon the highways. If the vehicle is not sold for use upon the highways, it shall be sold for junk, or demolished and sold as scrap. The police authority shall sell the vehicle at public auction. Notwithstanding any other provision of this section, any police authority, which has taken into possession any abandoned vehicle which lacks an engine or two or more wheels or another part which renders the vehicle totally inoperable may dispose of the vehicle to a demolisher for junk after complying with the notification procedures enumerated in subsection 3 and without public auction. The purchaser of the vehicle takes title free and clear of all liens and claims of ownership, shall receive a sales receipt from the

police authority, and is entitled to register the vehicle and receive a certificate of title if sold for use upon the highways. If the vehicle is sold or disposed of to a demolisher for junk, the demolisher shall make application for a junking certificate to the county treasurer within fifteen days of purchase and shall surrender the sales receipt in lieu of the certificate of title.

From the proceeds of the sale of an abandoned vehicle the police authority shall reimburse itself for the expenses of the auction, the costs of towing, preserving, and storing which resulted from placing the abandoned vehicle in custody, all notice and publication costs incurred pursuant to subsection 3, the cost of inspection, and any other costs incurred except costs of bookkeeping and other administrative costs. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lienholder for ninety days, and shall then be deposited in the road use tax fund. The costs to police authorities of auction, towing, preserving, storage, and all notice and publication costs, and all other costs which result from placing abandoned vehicles in custody, whenever the proceeds from a sale of the abandoned vehicles are insufficient to meet these expenses and costs, shall be paid from the road use tax fund.

The director of transportation shall establish by rule a claims procedure to be followed by police authorities in obtaining expenses and costs from the fund.

95 Acts, ch 48, §3; 95 Acts, ch 118, §13
 Subsection 1, paragraph b, NEW subparagraph (6)
 Subsection 4, unnumbered paragraph 1 divided and amended

321.90 Disposal of abandoned motor vehicles.

1. *Garagekeepers and abandoned motor vehicles.* Any motor vehicle left in a garage operated for commercial purposes after the period for which the vehicle was to remain on the premises shall, after notice by certified mail to the last known registered owner of the vehicle addressed to the owner's last known address of record to reclaim the vehicle within ten days of the date of the notice, be deemed an abandoned motor vehicle unless reclaimed by the owner within such ten-day period or the owner notifies the garagekeeper in writing within such period of time that such vehicle is not an abandoned motor vehicle and shall be reported by the garagekeeper to the police authority. If the identity or address of the last registered owner of the motor vehicle cannot be determined, the vehicle shall be deemed an abandoned motor vehicle on the eleventh day after the period for which the vehicle was to remain on the premises unless reclaimed by the owner within the ten-day period or the owner notifies the garagekeeper in writing within such period of time that such vehicle is not an abandoned motor vehicle and shall be reported by the garagekeeper to the police authority. All abandoned motor vehicles left in garages may be taken into custody by a police authority upon the request of the garagekeeper and sold in accordance

with the procedures set forth in section 321.89, subsection 4, unless the motor vehicle is reclaimed. The proceeds of the sale shall be first applied to the garagekeeper's charges for towing and storage, and any surplus proceeds shall be distributed in accordance with section 321.89, subsection 4. Nothing in this section shall be construed to impair any lien of a garagekeeper under the laws of this state, or the right of a garagekeeper to foreclose the garagekeeper's lien, provided that a garagekeeper shall be deemed to have abandoned the garagekeeper's artisan lien when such vehicle is taken into custody by the police authority. For the purposes of this section "garagekeeper" means any operator of a parking place or establishment, motor vehicle storage facility, or establishment for the servicing, repair, or maintenance of motor vehicles.

2. Disposal to demolisher.

a. Any person, firm, corporation, or unit of government upon whose property or in whose possession is found any abandoned motor vehicle, or any person being the owner of a motor vehicle whose title certificate is faulty, lost, or destroyed and is thereby unable to transfer title to the motor vehicle, may apply to the police authority of the jurisdiction in which the motor vehicle is situated for authority to sell, give away, or otherwise dispose of the motor vehicle to a demolisher.

b. The application shall set out the name and address of the applicant, and the year, make, model, and serial number of the motor vehicle, if ascertainable, together with any other identifying features, and shall contain a concise statement of the facts surrounding the abandonment, or a statement that the title of the motor vehicle is lost or destroyed, or the reasons for the defect of title in the owner. The applicant shall execute an affidavit stating that the facts alleged are true and that no material fact has been withheld. An order for disposal obtained pursuant to section 555B.8, subsection 3, satisfies the application requirements of this paragraph.

c. If the police authority finds that the application is executed in proper form, and shows that the motor vehicle has been abandoned upon the property of the applicant, or if it shows that the motor vehicle is not abandoned but that the applicant appears to be the rightful owner, the police authority shall follow appropriate notification procedures as set forth in section 321.89, subsection 3, except that in the case of an order for disposal obtained pursuant to section 555B.8, subsection 3, no notification is required.

d. If the abandoned motor vehicle is not reclaimed in accordance with section 321.89, subsection 3, or no lienholder objects to the disposal in the case of an owner-applicant, the police authority shall give the applicant a certificate of authority allowing the applicant to obtain a junking certificate for the motor vehicle. The applicant shall make application for a junking certificate to the county treasurer within fifteen days of purchase and surrender the certificate of authority in lieu of the certificate of title. The demolisher shall accept the junking cer-

tificate in lieu of the certificate of title to the motor vehicle.

e. Notwithstanding any other provisions of this section and sections 321.89 and 321.91, any person, firm, corporation, or unit of government upon whose property or in whose possession is found any abandoned motor vehicle, or any person being the owner of a motor vehicle whose title certificate is faulty, lost, or destroyed, may dispose of such motor vehicle to a demolisher for junk without a title and without the notification procedures of section 321.89, subsection 3, if the motor vehicle lacks an engine or two or more wheels or other structural part which renders the vehicle totally inoperable. The police authority shall give the applicant a certificate of authority. The owner shall apply to the county treasurer for a junking certificate within fifteen days of purchase and shall surrender the certificate of authority in lieu of the certificate of title.

f. The owner of an abandoned motor vehicle and all lienholders shall no longer have any right, title, claim, or interest in or to the motor vehicle; and no court in any case in law or equity shall recognize any right, title, claim, or interest of any owner or lienholders after the disposal of the motor vehicle to a demolisher.

g. Any proceeds from the sale of an abandoned motor vehicle to a demolisher under this section, by one other than the owner of the vehicle, except the sale of a vehicle pursuant to an order for disposal obtained pursuant to section 555B.8, subsection 3, shall first be applied to that person's expenses in effecting the sale, including storage, towing, and disposal charges, and any surplus shall be distributed in accordance with section 321.89, subsection 4. The proceeds from the sale of a vehicle disposed of pursuant to section 555B.8, subsection 3, shall be distributed in accordance with section 555B.9.

3. Duties of demolishers.

a. Any demolisher who purchases or otherwise acquires an abandoned motor vehicle for junk under the provisions of this section shall junk, scrap, wreck, dismantle, or demolish such motor vehicle. A demolisher shall not junk, scrap, wreck, dismantle, or demolish a vehicle until the demolisher has obtained the junking certificate issued for the vehicle.

b. A demolisher shall keep an accurate and complete record of all motor vehicles purchased or received by the demolisher in the course of the demolisher's business. These records shall contain the name and address of the person from whom each motor vehicle was purchased or received and the date when the purchases or receipts occurred. The records shall be open for inspection by any police authority at any time during normal business hours. Any record required by this section shall be kept by the demolisher for at least one year after the transaction to which it applies.

95 Acts, ch 118, §14, 15

Subsection 2, paragraphs d, e and f amended

Subsection 3 amended

321.101 Suspension or revocation of registration or certificate of title.

The department is hereby authorized to suspend or revoke the registration of a vehicle, registration card, registration plate, or any nonresident or other permit in any of the following events:

1. When the department is satisfied that such registration card, plate, or permit was fraudulently or erroneously issued.

2. When the department determines that a registered vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.

3. When a registered vehicle has been dismantled or wrecked.

4. When the department determines that the required fee has not been paid and the same is not paid upon reasonable notice and demand.

5. When a registration card, registration plate, or permit is knowingly displayed upon a vehicle other than the one for which issued.

6. When the department determines that the owner has committed any offense under this chapter involving the registration card, plate, or permit to be suspended or revoked.

7. When the department is so authorized under any other provision of law.

8. The department shall cancel a certificate of title that appears to have been improperly issued or fraudulently obtained or in the case of a mobile home, if taxes were owing under chapter 435 at the time the certificate was issued and have not been paid. However, before the certificate to a mobile home where taxes were owing can be canceled, notice and opportunity to pay the taxes must be given to the person to whom the certificate was issued. Upon cancellation of any certificate of title the department shall notify the county treasurer who issued it, who shall enter the cancellation upon the records. The department shall also notify the person to whom the certificate of title was issued, as well as any lienholders appearing thereon, of the cancellation and shall demand the surrender of the certificate of title, but the cancellation shall not affect the validity of any lien noted thereon.

9. If a commercial motor vehicle has been assigned to be operated by a commercial motor carrier whose ability to operate has been terminated or denied by a federal agency.

10. Notice of suspension or revocation of the registration of a vehicle, registration card, registration plate, or any nonresident or other permit under the terms of this section shall be by personal delivery of said notice to the person to be so notified or by certified mail addressed to such person at the person's address as shown on the registration record. No return acknowledgment shall be necessary to prove such latter service.

If a vehicle, for which the registration has been suspended or revoked pursuant to subsection 4 of this section, is transferred to a bona fide purchaser for value without actual knowledge of such suspension or revocation then the vehicle shall be deemed to be

registered and the provisions of sections 321.28 and 321.30, subsections 4 and 5, shall not be applicable to such vehicle for the failure of the previous owner to pay the required fees.

95 Acts, ch 55, §5
NEW subsection 9 and former subsection 9 renumbered as 10

321.105 Annual fee required.

An annual registration fee shall be paid for each vehicle operated upon the public highways of this state unless the vehicle is specifically exempted under this chapter. If a vehicle, which has been registered for the current registration year, is transferred during the registration year, the transferee shall reregister the vehicle as provided in section 321.46.

The registration fee shall be paid to the county treasurer at the same time the application is made for the registration or reregistration of the motor vehicle or trailer. An owner may, when applying for registration or reregistration of a motor vehicle or trailer, request that the plates be mailed to the owner's post-office address. The owner's request shall be accompanied by a mailing fee as determined annually by the director.

Upon application by a financial institution, as defined in section 422.61, and approval of the application by the county treasurer, the county treasurer in any county may authorize the financial institution to receive applications for renewal of vehicle registrations and payment of the registration fees. The registration fees shall be delivered to the county treasurer at the time the county treasurer has processed the vehicle registration application. Registration fees received with vehicle registration applications shall be designated as public funds only upon receipt of such funds by the county treasurer from the financial institution.

In addition to the payment of an annual registration fee for each trailer and semitrailer to be issued an annual registration plate, an additional registration fee may be paid for a period of two or four subsequent registration years.

Seriously disabled veterans who have been provided with an automobile or other vehicle by the United States government under the provisions of sections 1901 to 1903, Title 38 of the United States Code, [38 U.S.C. § 1901 et seq. (1970)] shall be exempt from payment of any automobile registration fee provided in this chapter, and shall be provided, without fee, with a registration plate. The disabled veteran, to be able to claim the above benefit, must be a resident of the state of Iowa and must produce a certificate of title to the automobile owned and registered in this state in the name of said veteran.

95 Acts, ch 118, §16
Unnumbered paragraph 4 amended

321.122 Trucks, truck tractors, road tractors, and semitrailers — fees.

1. The annual registration fee for truck tractors, road tractors, and motor trucks, except motor trucks registered as special trucks, shall be based on the

combined gross weight of the vehicle or combination of vehicles. All trucks, truck tractors, or road tractors shall be registered for a gross weight equal to or in excess of the unladen weight of the vehicle or combination of vehicles. The annual registration fee for such vehicles or combination of vehicles, except special trucks, shall be:

a. For a combined gross weight of three tons or less sixty-five dollars and a vehicle which is more than ten model years old fifty-five dollars and a vehicle which is more than thirteen model years old forty-five dollars and a vehicle which is more than fifteen years old thirty-five dollars.

b. For a combined gross weight exceeding three tons, the annual registration fee shall be as set forth in the following schedule:

For a combined gross weight exceeding:	And not exceeding:	The annual registration fee shall be:
3 Tons	4 Tons	\$ 80
4 Tons	5 Tons	\$ 90
5 Tons	6 Tons	\$ 105
6 Tons	7 Tons	\$ 130
7 Tons	8 Tons	\$ 165
8 Tons	9 Tons	\$ 200
9 Tons	10 Tons	\$ 235
10 Tons	11 Tons	\$ 270
11 Tons	12 Tons	\$ 305
12 Tons	13 Tons	\$ 340
13 Tons	14 Tons	\$ 375
14 Tons	15 Tons	\$ 445
15 Tons	16 Tons	\$ 485
16 Tons	17 Tons	\$ 525
17 Tons	18 Tons	\$ 565
18 Tons	19 Tons	\$ 610
19 Tons	20 Tons	\$ 675
20 Tons	21 Tons	\$ 715
21 Tons	22 Tons	\$ 755
22 Tons	23 Tons	\$ 795
23 Tons	24 Tons	\$ 835
24 Tons	25 Tons	\$ 965
25 Tons	26 Tons	\$1,010
26 Tons	27 Tons	\$1,060
27 Tons	28 Tons	\$1,105
28 Tons	29 Tons	\$1,150
29 Tons	30 Tons	\$1,200
30 Tons	31 Tons	\$1,245
31 Tons	32 Tons	\$1,295
32 Tons	33 Tons	\$1,340
33 Tons	34 Tons	\$1,415
34 Tons	35 Tons	\$1,465
35 Tons	36 Tons	\$1,510
36 Tons	37 Tons	\$1,555
37 Tons	38 Tons	\$1,605
38 Tons	39 Tons	\$1,650
39 Tons	40 Tons	\$1,695

c. For a combined gross weight exceeding forty tons, the annual registration fee shall be one thousand six hundred ninety-five dollars plus eighty dollars for each ton over forty tons.

2. *a.* For semitrailers the annual registration fee is ten dollars which shall not be reduced or prorated under chapter 326.

b. For trailers and semitrailers licensed under chapter 326, the annual registration fee for the permanent registration plate shall be ten dollars which shall not be reduced or prorated under chapter 326. The registration fees for a permanent registration plate shall, at the option of the registrant, be remitted to the department at five-year intervals or on an annual basis.

3. For truck tractors or road tractors equipped with two or more solid rubber tires, the annual registration fee shall be the fee for truck tractors or road tractors with pneumatic tires and of the same combined gross weight, plus twenty-five percent thereof.

4. This section shall not apply to a rubber-tired farm tractor not operated for hire upon the public highways.

95 Acts, ch 118, §17
Subsection 2 amended

321.123 Trailers.

All trailers except farm trailers and mobile homes, unless otherwise provided in this section, are subject to a registration fee of six dollars for trailers with a gross weight of one thousand pounds or less and ten dollars for other trailers. Trailers for which the empty weight is two thousand pounds or less are exempt from the certificate of title and lien provisions of this chapter. Fees collected under this section shall not be reduced or prorated under chapter 326.

1. Travel trailers and fifth-wheel travel trailers, except those in manufacturer's or dealer's stock, an annual fee of twenty cents per square foot of floor space computed on the exterior overall measurements, but excluding three feet occupied by any trailer hitch as provided by and certified to by the owner, to the nearest whole dollar, which amount shall not be prorated or refunded; except the annual fee for travel trailers of any type, when registered in Iowa for the first time or when removed from a manufacturer's or dealer's stock, shall be prorated on a monthly basis. It is further provided the annual fee thus computed shall be limited to seventy-five percent of the full fee after the vehicle is more than six model years old.

A travel trailer may be stored under section 321.134, provided the travel trailer is not used for human habitation for any period during storage and is not moved upon the highways of the state. A travel trailer stored under section 321.134 is not subject to a mobile home tax assessed under chapter 435.

2. Trailers and bulk spreaders which are not self-propelled having a gross weight of not more than twelve tons used for the transportation of fertilizers and chemicals used for farm crop production shall be subject to a registration fee of five dollars.

3. Motor trucks or truck tractors pulling trailers or semitrailers shall be registered for the combined gross weight of the motor truck or truck tractor and trailer or semitrailer, except that:

a. Motor trucks registered for six tons or less not used for hire, pulling trailers or semitrailers used by a person engaged in farming to transport commodities produced by the owner, or to transport commodities or livestock purchased by the owner for use in the owner's own farming operation or used by any person to transport horses shall not be subject to registration for the gross weight of such trailer or semitrailer provided the combined gross weight does not exceed twelve tons, plus the tolerance provided for in section 321.466.

b. Motor trucks registered for six tons or less not used for hire, pulling trailers or semitrailers used by a person in the person's own operations shall not be subject to registration for the gross weight of such trailer or semitrailer provided the combined gross weight does not exceed eight tons, plus the tolerance provided for in section 321.466.

95 Acts, ch 118, §18
Subsection 1, unnumbered paragraph 1 amended

321.177 Persons not to be licensed.

The department shall not issue a motor vehicle license:

1. To any person who is under the age of eighteen years, without the person's first having successfully completed an approved driver education course, in which case, the minimum age is sixteen years. However, the department may issue a driver's license to certain minors as provided in section 321.194, an instruction permit as provided in section 321.180, subsection 1, or a driver's license restricted to motorized bicycles as provided in section 321.189, subsection 8.

2. To any person holding any other motor vehicle license.

3. To any person whose motor vehicle license or driving privilege is suspended or revoked.

4. To any person who is a chronic alcoholic, or is addicted to the use of an illegal narcotic drug.

5. To any person who has previously been adjudged to be incompetent by reason of mental illness and who has not at the time of application been restored to competency by the methods provided by law.

6. To any person who fails to pass an examination required by this chapter.

7. To any person when the director has good cause to believe the person by reason of physical or mental disability would not be able to operate a motor vehicle safely.

8. To any person to operate a commercial motor vehicle unless the person is eighteen years of age or older and the person qualifies under federal and state law to be issued a commercial driver's license in this state.

9. To any person, as a chauffeur, who is under the age of eighteen.

10. To any person who has a delinquent account owed to the state according to records provided to the state department of transportation by the department of revenue and finance pursuant to section

421.17, unless the person provides to the state department of transportation evidence of approval for issuance from the department of revenue and finance. The department of revenue and finance shall approve issuance if the applicant has made arrangements for payment of the debt with the agency, which is owed or is collecting the debt, to the satisfaction of the agency. This subsection is only applicable to those persons who are applying for issuance of a license in a county which is participating in the driver's license indebtedness clearance pilot project.

95 Acts, ch 194, §5

Subsection 10 effective January 1, 1996; provisions of driver's license indebtedness clearance pilot project commence on January 1, 1996, and end on January 1, 1997; see 95 Acts, ch 194, §11, 12

NEW subsection 10

321.179 County treasurers — issuance of motor vehicle licenses.

1. Notwithstanding the provisions of this chapter or chapter 321L which grant sole authority to the department for the issuance of motor vehicle licenses, nonoperator's identification cards, and handicapped identification devices, the counties of Adams, Cass, Fremont, Mills, Montgomery, and Page shall be authorized to issue motor vehicle licenses, nonoperator's identification cards, and handicapped identification devices on a permanent basis. However, a county shall only be authorized to issue commercial driver's licenses if certified to do so by the department. If a county fails to meet the standards for certification under this section, the department itself shall provide for the issuance of commercial driver's licenses in that county. The department shall certify the county treasurers in the permanent counties to issue commercial driver's licenses if all of the following conditions are met:

a. The driving skills test is the same as that which would otherwise be administered by the state.

b. The county examiner contractually agrees to comply with the requirements of 49 C.F.R. § 383.75, adopted as of a specific date by rule by the department.

c. The department provides supervision over the issuance of commercial driver's licenses and the administration of written tests by the county treasurers.

2. The department shall retain all supervisory authority over the county treasurers who shall be subject to the supervision of the department and shall be considered agents of the department when performing motor vehicle licensing functions.

95 Acts, ch 220, §28

Retention of portion of moneys from license transactions by county treasurers for expenses; conditions; 95 Acts, ch 220, §27

NEW section

321.182 Application.

Every applicant for a motor vehicle license shall do all of the following:

1. Make application on a form provided by the department which shall include the applicant's full name, signature, current mailing address, current residential address, date of birth, social security

number, and physical description including sex, height, and eye color. The application may contain other information the department may require by rule.

2. Surrender all other motor vehicle licenses and nonoperator's identification cards.

3. Certify that the applicant has no other motor vehicle license.

4. Certify that the applicant is not currently subject to suspension, revocation, or cancellation of any motor vehicle license and has committed no offense and has not acted in a manner which either alone or with previous actions or offenses could result in suspension, revocation, or cancellation of any motor vehicle license.

95 Acts, ch 118, §21

Subsection 2 amended

321.189 Driver's license — content — motorcycle rider education fund.

1. *Classification and issuance.* Upon payment of the required fee, the department shall issue to every qualified applicant a driver's license. Driver's licenses shall be classified as follows:

a. Class A — Valid for the operation of vehicles with a gross combination weight rating of twenty-six thousand one or more pounds if the towed vehicle or vehicles have a gross vehicle weight rating or gross combination weight rating of ten thousand one or more pounds, and also valid for the operation of vehicles with lower gross combination weight ratings and other vehicles except motorcycles.

b. Class B — Valid for the operation of a vehicle with a gross vehicle weight rating of twenty-six thousand one or more pounds or a combination of vehicles with a gross combination weight rating of twenty-six thousand one or more pounds if the towing vehicle has a gross vehicle weight rating of twenty-six thousand one or more pounds and the towed vehicle or vehicles have a gross vehicle weight rating or gross combination weight rating of less than ten thousand one pounds, and also valid for the operation of vehicles with lower gross vehicle weight ratings or gross combination weight ratings except motorcycles.

c. Class C — Valid for the operation of a vehicle, other than a motorcycle, or a combination of vehicles with a gross combination weight rating of twenty-six thousand one or more pounds provided the towing vehicle has a gross vehicle weight rating of less than twenty-six thousand one pounds and each towed vehicle has a gross vehicle weight rating of less than ten thousand one pounds, or a combination of vehicles with a gross vehicle weight rating or gross combination weight rating of less than twenty-six thousand one pounds and also valid for the operation of any vehicle, other than a motorcycle, for which the operator is exempt from commercial driver's license requirements under section 321.176A.

d. Class D — Valid for the operation of a motor vehicle as a chauffeur.

e. Class M — Valid for the operation of a motorcycle.

A driver's license may be issued for more than one class. Class A and B driver's licenses shall only be issued as commercial driver's licenses. Class C and M driver's licenses may be issued as commercial driver's licenses. A driver's license is not valid for the operation of a vehicle requiring an endorsement unless the driver's license is endorsed for the vehicle. A class D driver's license is also valid as a noncommercial class C driver's license. The holder of a commercial driver's license is not required to obtain a class D driver's license to operate a motor vehicle as a chauffeur. When necessary, the department shall by rule create additional classes or modify existing classes of driver's licenses, however, the rule shall be temporary and if within sixty days after the next regular session of the general assembly convenes the general assembly has not made corresponding changes in this chapter, the temporary classification or modification shall be nullified.

2. *Content of license.*

a. Appearing on the driver's license shall be a distinguishing number assigned to the licensee; the licensee's full name, date of birth, sex, and residence address; a colored photograph; a physical description of the licensee; the name of the state; the dates of issuance and expiration; and the usual signature of the licensee. The license shall identify the class of vehicle the licensee may operate and the applicable endorsements and restrictions which the department shall require by rule.

b. A commercial driver's license shall include the licensee's address as required under federal regulations and the licensee's social security number, and the words "commercial driver's license" or "CDL" shall appear prominently on the face of the license. If the applicant is a nonresident, the license must conspicuously display the word "nonresident".

c. The department shall advise an applicant that the applicant for a motor vehicle license other than a commercial driver's license may request a number other than a social security number as the motor vehicle license number.

d. The license may contain other information as required under the department's rules.

3. *Replacement.* If prior to the renewal date, a person desires to obtain a motor vehicle license in the form authorized by this section, a license may be issued as a voluntary replacement upon payment of the required fee as set by the department by rule. A person shall return a motor vehicle license and be issued a new license when the first license contains inaccurate information upon payment of the required fee as set by the department by rule.

4. *Symbols.* Upon the request of a licensee, or a person renewing the person's license by mail, the department shall indicate on the license, or the validation document issued to a person renewing by mail, the presence of a medical condition, that the licensee is a donor under the uniform anatomical gift law, or that the licensee has in effect a medical advance directive. For purposes of this subsection, a medical advance directive includes, but is not limited to, a

valid durable power of attorney for health care as defined in section 144B.1. The license may contain such other information as the department may require by rule.

5. *Tamperproofing.* The department shall issue a motor vehicle license by a method or process which prevents as nearly as possible the alteration, reproduction, or superimposition of a photograph on the license without ready detection.

6. *Licenses issued to minors.* A motor vehicle license issued to a person under twenty-one years of age shall be identical in form to any other motor vehicle license except that the words "under twenty-one" shall appear prominently on the face of the license. Upon attaining the age of twenty-one, and upon payment of a one dollar fee, the person shall be entitled to a new motor vehicle license or nonoperator's identification card for the unexpired months of the motor vehicle license or card.

7. *Class M license education requirements.* A person applying for a driver's license valid for the operation of a motorcycle shall be required to successfully complete a motorcycle education course either approved and established by the department of education or from a private or commercial driver education school licensed by the department before the class M license will be issued. A public school district shall charge a student a fee which shall not exceed the actual cost of instruction minus moneys received by the school district under subsection 9.

The requirement that an applicant complete a motorcycle education course prior to issuance of a driver's license under this subsection does not apply to the following:

a. An operator who has been issued a class M license prior to May 1, 1997.

b. An operator who is renewing the operator's class M license issued prior to May 1, 1997.

c. An operator who has been issued a driver's license which is valid for the operation of a motorcycle in another state.

8. *Motorized bicycle.*

a. The department may issue a driver's license valid only for operation of a motorized bicycle to a person fourteen years of age or older who has passed a vision test or who files a vision report as provided in section 321.186A which shows that the applicant's visual acuity level meets or exceeds those required by the department and who passes a written examination on the rules of the road. A person under the age of sixteen applying for a driver's license valid only for operation of a motorized bicycle shall also be required to successfully complete a motorized bicycle education course approved and established by the department of education or successfully complete an approved motorized bicycle education course at a private or commercial driver education school licensed by the department. A public school district shall charge a student a fee which shall not exceed the actual cost of instruction. A driver's license valid only for operation of a motorized bicycle entitles the licensee to operate a motorized bicycle upon the

highway while having the license in the licensee's immediate possession. The license is valid for a period not to exceed two years from the licensee's birthday anniversary in the year of issuance, subject to termination or cancellation as provided in this section.

b. A driver's license valid only for operation of a motorized bicycle shall be canceled upon a conviction for a moving traffic violation and reapplication may be made thirty days after the date of cancellation. The cancellation of the license upon conviction for a moving traffic violation shall not result in requiring the applicant to maintain proof of financial responsibility under section 321A.17, unless the conviction would otherwise result in a suspension or revocation of a person's driver's license.

c. As used in this section, "*moving traffic violation*" does not include a parking violation as defined in section 321.210 or a violation of a section of the Code or municipal ordinance pertaining to standards to be maintained for motor vehicle equipment except sections 321.430 and 321.431, or except a municipal ordinance pertaining to motor vehicle brake requirements as applicable to motorized bicycles.

d. The holder of any class of driver's license may operate a motorized bicycle.

9. *Motorcycle rider education fund.* The motorcycle rider education fund is established in the office of the treasurer of state. The moneys credited to the fund are appropriated to the department of education to be used to establish new motorcycle rider education courses and reimburse sponsors of motorcycle rider education courses for the costs of providing motorcycle rider education courses approved and established by the department of education. The department of education shall adopt rules under chapter 17A providing for the distribution of moneys to sponsors of motorcycle rider education courses based upon the costs of providing the education courses.

95 Acts, ch 67, §25; 95 Acts, ch 95, §1; 95 Acts, ch 118, §22

1994 amendments to subsection 7, as amended by the 1995 amendments to the subsection, are effective May 1, 1997; for law prior to July 1, 1997, see Code 1993; 94 Acts, ch 1102, §4; 94 Acts, ch 1199, §52; 95 Acts, ch 118, §37 and 39

See Code editor's note

Subsection 4 amended

Subsection 7, paragraphs a and b amended

321.208 Commercial driver's license disqualification — replacement driver's license — temporary license.

1. A person is disqualified from operating a commercial motor vehicle for one year upon a conviction or final administrative decision that the person while operating a commercial motor vehicle has committed any of the following acts or offenses in any state or foreign jurisdiction:

a. Operating a commercial motor vehicle while under the influence of an alcoholic beverage or other drug or controlled substance or a combination of such substances.

b. Operating a commercial motor vehicle with an alcohol concentration, as defined in section 321J.1, of 0.04 or more.

c. Refusal to submit to chemical testing required under chapter 321J.

d. Failure to stop and render aid at the scene of an accident involving the person's vehicle.

e. A felony or aggravated misdemeanor involving the use of a commercial motor vehicle other than an offense involving manufacturing, distributing, or dispensing a controlled substance.

However, a person is disqualified for three years if the act or offense occurred while the person was operating a commercial motor vehicle transporting hazardous material of a type or quantity requiring vehicle placarding.

2. A person is disqualified for life if convicted or found to have committed two or more of the above acts or offenses arising out of two or more separate incidents. However, a disqualification for life is subject to a reduction to a ten-year disqualification as provided in 49 C.F.R. § 383.51 adopted as of a specific date by rule by the department.

3. A person is disqualified from operating a commercial motor vehicle for the person's life upon a conviction that the person used a commercial motor vehicle in the commission of a felony or aggravated misdemeanor involving the manufacturing, distributing, or dispensing of a controlled substance as defined in section 124.101.

4. A person is disqualified from operating a commercial motor vehicle if the person receives convictions for committing within any three-year period two or more of the following offenses while operating a commercial motor vehicle:

a. Speeding fifteen miles per hour or more over the legal speed limit.

b. Reckless driving.

c. Any violation of the traffic laws, except a parking violation or a vehicle weight violation, which arises in connection with a fatal traffic accident.

d. Operating a commercial motor vehicle when not issued a motor vehicle license valid for the vehicle operated.

e. Operating a commercial motor vehicle upon a highway when disqualified.

f. Operating a commercial motor vehicle upon a highway without immediate possession of a motor vehicle license valid for the vehicle operated.

g. Following another motor vehicle too closely.

h. Improper lane changes in violation of section 321.306.

The period of disqualification under this subsection shall be sixty days for two offenses within any three-year period and one hundred twenty days for three offenses within any three-year period.

5. A person is disqualified from operating a commercial motor vehicle when the person's driving privilege is suspended or revoked.

6. A person is disqualified from operating a commercial motor vehicle:

a. For ninety days upon conviction for the first violation of an out-of-service order; for one year, upon conviction for a second violation of an out-of-service order in separate incidents within a ten-year period;

and for not less than three and not more than five years upon conviction for a third or subsequent violation of an out-of-service order in separate incidents within a ten-year period.

b. For one year upon conviction for the first violation and for not less than three years and not more than five years upon conviction for a second or subsequent violation of an out-of-service order while transporting hazardous materials required to be placarded, or while operating a commercial motor vehicle designed to transport more than fifteen passengers including the driver.

7. Upon receiving a record of a person's disqualifying conviction, administrative decision, suspension, or revocation, the department shall, by rule, without preliminary hearing and upon twenty days' advance notice, disqualify the person from operating a commercial motor vehicle upon a highway.

8. A person is disqualified from operating a commercial motor vehicle if the person either refuses to submit to chemical testing required under chapter 321J or submits to chemical testing and the results show an alcohol concentration as defined in section 321J.1 of 0.04 or more. The department, upon receipt of the peace officer's certification, subject to penalty for perjury, that the peace officer had reasonable grounds to believe the person to have been operating a commercial motor vehicle with an alcohol concentration of 0.04 or more and that the person refused to submit to the chemical testing or submitted to chemical testing and the results show an alcohol concentration as defined in section 321J.1 of 0.04 or more, shall, without preliminary hearing and upon twenty days' advance notice, disqualify the person from operating a commercial motor vehicle upon a highway.

The effective date of disqualification shall be twenty days after notification. Immediate notice of disqualification may be served on a person operating a commercial motor vehicle who refused to submit to a test or whose test results indicate an alcohol concentration of 0.04 or more by the peace officer administering the chemical test or the department may notify the person by certified mail. If immediate notice is served, the peace officer shall take the commercial driver's license or permit of the driver, if issued within the state, and issue a temporary commercial driver's license effective for only twenty days. The peace officer shall immediately send the person's commercial driver's license to the department in addition to the officer's certification required by this subsection.

9. Upon notice, the disqualified person shall surrender the person's commercial driver's license to the department and the department may issue a driver's license valid only to operate a noncommercial motor vehicle upon payment of a one dollar fee. The department shall notify the commercial driver's license information system of the disqualification if required to do so under section 321.204.

10. Notwithstanding the Iowa administrative procedure Act, the filing of a petition for judicial review shall stay the disqualification pending the determination by the district court.

11. The department may reinstate a qualified person's privilege to operate a commercial motor vehicle after a period of disqualification and after payment of required fees.

12. As used in this section, the terms "acts", "actions", and "offenses" mean acts, actions, or offenses which occur on or after July 1, 1990.

95 Acts, ch 55, §6

NEW subsection 6 and former subsections 6-11 renumbered as 7-12

321.208A Operation in violation of out-of-service order — penalty.

A person required to hold a commercial driver's license to operate a commercial motor vehicle shall not operate a commercial motor vehicle on the highways of this state in violation of an out-of-service order issued by a peace officer for a violation of the out-of-service rules adopted by the department. An employer shall not allow an employee to drive a commercial motor vehicle in violation of such out-of-service order. The department shall adopt out-of-service rules which shall be consistent with 49 C.F.R. § 392.5 adopted as of a specific date by the department. A person who violates this section shall be subject to a penalty of one hundred dollars.

95 Acts, ch 55, §7

Section amended

321.210B Suspension for failure to pay indebtedness owed to the state.

The department shall suspend the motor vehicle license of a person who has a delinquent account owed to the state according to records provided by the department of revenue and finance pursuant to section 421.17. A license shall be suspended until such time as the department of revenue and finance notifies the state department of transportation that the licensee has made arrangements for payment of the debt with the agency which is owed or is collecting the debt. This section is only applicable to those persons residing in a county which is participating in the driver's license indebtedness clearance pilot project.

95 Acts, ch 194, §6

Effective January 1, 1996; provisions of driver's license indebtedness clearance pilot project commence on January 1, 1996, and end on January 1, 1997; see 95 Acts, ch 194, §11, 12

NEW section

321.213 License suspensions or revocations due to violations by juvenile drivers.

Upon the entering of an order at the conclusion of an adjudicatory hearing under section 232.47 that the child violated a provision of this chapter or chapter 124, 126, 321A, 321J, or 453B for which the penalty is greater than a simple misdemeanor, the clerk of the juvenile court in the adjudicatory hearing shall forward a copy of the adjudication to the department. Notwithstanding section 232.55, a final adjudication in a juvenile court that the child violated a provision of this chapter, chapter 124, a drug offense under section 126.3, or chapter 321A, 321J, or 453B constitutes a final conviction for purposes of section 321.189, subsection 8, paragraph "b", and sections 321.193, 321.194, 321.200, 321.209, 321.210,

321.215, 321.555, 321A.17, 321J.2, 321J.3, and 321J.4. However, suspensions for violations of chapter 124, section 126.3, or chapter 453B shall be in accordance with section 321.213A.

95 Acts, ch 55, §8
Section amended

321.213A License suspension for juveniles adjudicated delinquent for certain drug or alcohol offenses.

Upon the entering of an order at the conclusion of a dispositional hearing under section 232.50, where the child has been adjudicated to have committed a delinquent act, which would be a first or subsequent violation of section 123.46, section 123.47 involving the purchase or attempt to purchase alcoholic beverages, chapter 124, section 126.3, chapter 453B, or a second or subsequent violation of section 123.47 regarding the possession of alcoholic beverages, the clerk of the juvenile court in the dispositional hearing shall forward a copy of the adjudication and dispositional order to the department. The department shall suspend the license or operating privilege of the child for one year. The child may receive a temporary restricted license as provided in section 321.215.

95 Acts, ch 55, §9
Section amended

321.215 Temporary restricted license — temporary restricted permit.

1. The department, on application, may issue a temporary restricted license to a person whose motor vehicle license is suspended or revoked under this chapter, allowing the person to drive to and from the person's home and specified places at specified times which can be verified by the department and which are required by any of the following:

- a. The person's full-time or part-time employment.
- b. The person's continuing health care or the continuing health care of another who is dependent upon the person.
- c. The person's continuing education while enrolled in an educational institution on a part-time or full-time basis and while pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion.
- d. The person's substance abuse treatment.
- e. The person's court-ordered community service responsibilities.

However, a temporary restricted license shall not be issued to a person whose license is revoked under section 321.205 for a drug or drug-related offense or under section 321.209, subsections 1 through 5 or subsection 7 or 8 or to a juvenile whose license has been suspended under section 321.213A for a violation of chapter 124 or 453B, or section 126.3. A temporary restricted license may be issued to a person whose license is revoked under section 321.209, subsection 6, only if the person has no previous drag racing convictions. A person holding a temporary restricted license issued by the department under this section shall not operate a motor vehicle for pleasure.

2. Upon conviction and the suspension or revocation of a person's motor vehicle license under section 321.205 for a drug or drug-related offense; 321.209, subsection 5, 6, or 8; section 321.210; 321.210A; or 321.513; or upon the denial of issuance of a motor vehicle license under section 321.560, based solely on offenses enumerated in section 321.555, subsection 1, paragraph "c", or section 321.555, subsection 2; or a juvenile, whose license has been suspended under section 321.213A for a violation of chapter 124 or 453B, or section 126.3, and upon the denial by the director of an application for a temporary restricted license, a person may apply to the district court having jurisdiction for the residence of the person for a temporary restricted permit to operate a motor vehicle for the limited purpose or purposes specified in subsection 1. The application may be granted only if all of the following criteria are satisfied:

a. The temporary restricted permit is requested only for a case of extreme hardship or compelling circumstances where alternative means of transportation do not exist.

b. The permit applicant has not made an application for a temporary restricted permit in any district court in the state which was denied.

c. The temporary restricted permit is restricted to the limited purpose or purposes specified in subsection 1 at times specified in the permit.

d. Proof of financial responsibility is established as defined in chapter 321A. However, such proof is not required if the motor vehicle license was suspended under section 321.210A or 321.513 or revoked under section 321.209, subsection 8, or suspended or revoked under section 321.205 for a drug or drug-related offense.

The district court shall forward a record of each application for such temporary restricted permit to the department, together with the results of the disposition of the request by the court. A temporary restricted permit is valid only if the department is in receipt of records required by this section.

3. The temporary restricted license or permit shall be canceled upon conviction of a moving traffic violation or upon a violation of a term of the license or permit. A "moving traffic violation" does not include a parking violation as defined in section 321.210.

4. The temporary restricted license or permit is not valid to operate a commercial motor vehicle if a commercial driver's license is required for the person's operation of the commercial motor vehicle and the person is disqualified to operate a commercial motor vehicle under section 321.208, subsections 1, 2, 3, or 4.

95 Acts, ch 55, §10; 95 Acts, ch 143, §1
See Code editor's note to §13B.8
Subsections 1 and 2 amended

321.218 Operating without valid motor vehicle license or when disqualified — penalties.

1. A person whose motor vehicle license or operating privilege has been denied, canceled, suspended,

or revoked as provided in this chapter, and who operates a motor vehicle upon the highways of this state while the license or privilege is denied, canceled, suspended, or revoked, commits a serious misdemeanor.

2. However, a person whose license or operating privilege has been revoked under section 321.209, and who operates a motor vehicle upon the highways of this state while the license or privilege is revoked, commits a serious misdemeanor.

3. The sentence imposed under this section shall not be suspended by the court, notwithstanding section 907.3 or any other statute.

4. The department, upon receiving the record of the conviction of a person under this section upon a charge of operating a motor vehicle while the license of the person is suspended or revoked, shall, except for licenses suspended under section 321.210, subsection 1, paragraph "c", 321.210A, or 321.513, extend the period of suspension or revocation for an additional like period, and the department shall not issue a new motor vehicle license to the person during the additional period.

If the department receives a record of a conviction of a person under this section but the person's driving record does not indicate what the original grounds of suspension were, the period of suspension under this subsection shall be for a period not to exceed six months.

5. A person who operates a commercial motor vehicle upon the highways of this state when disqualified from operating the commercial motor vehicle under section 321.208 commits a simple misdemeanor if a commercial driver's license is required for the person to operate the commercial motor vehicle.

6. The department, upon receiving the record of a conviction of a person under this section upon a charge of operating a commercial motor vehicle while the person is disqualified shall extend the period of disqualification for an additional like period.

95 Acts, ch 48, §4
Subsection 1 amended

321.236 Powers of local authorities.

Local authorities shall have no power to enact, enforce, or maintain any ordinance, rule or regulation in any way in conflict with, contrary to or inconsistent with the provisions of this chapter, and no such ordinance, rule or regulation of said local authorities heretofore or hereafter enacted shall have any force or effect, however the provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

1. Regulating the standing or parking of vehicles. Parking meter, snow route, and overtime parking violations which are denied shall be charged and proceed before a court the same as other traffic violations. Filing fees and court costs shall be assessed as provided in section 602.8106, subsection 1 and section 805.6, subsection 1, paragraph "a" for

parking violation cases. Parking violations which are admitted:

a. May be charged and collected upon a simple notice of a fine payable to the city clerk or clerk of the district court, if authorized by ordinance. The fine shall not exceed five dollars except for snow route parking violations in which case the fine shall not exceed twenty-five dollars. The fine may be increased up to ten dollars if the parking violation is not paid within thirty days of the date upon which the violation occurred, if authorized by ordinance. Violations of section 321L.4, subsection 2, may be charged and collected upon a simple notice of a fifty dollar fine payable to the city clerk or clerk of the district court, if authorized by ordinance. No costs or other charges shall be assessed. All fines collected by a city pursuant to this paragraph shall be retained by the city and all fines collected by a county pursuant to this paragraph shall be retained by the county.

b. Notwithstanding any such ordinance, may be prosecuted under the provisions of sections 805.7 to 805.13 or as any other traffic violation.

c. If the local authority regulating the standing or parking of vehicles under this subsection is located in a county where the renewal of registration of a vehicle shall be refused for unpaid restitution under section 321.40, the simple notice of fine under paragraph "a" shall contain the following statement:

"FAILURE TO PAY RESTITUTION OWED BY YOU CAN BE GROUNDS FOR REFUSING TO RENEW YOUR MOTOR VEHICLE'S REGISTRATION."

This paragraph does not invalidate forms for notice of parking violations in existence prior to July 1, 1980. Existing forms may be used until supplies are exhausted.

2. Regulating traffic by means of police officers or traffic-control signals.

3. Regulating or prohibiting processions or assemblages on the highways.

4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction.

5. Regulating the speed of vehicles in public parks.

6. Designating any highway as a through highway and requiring that all vehicles stop or yield the right of way before entering or crossing the same or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to such intersections.

7. Licensing and regulating the operation of vehicles offered to the public for hire and used principally in intracity operation.

8. Restricting the use of highways as authorized in sections 321.471 to 321.473.

9. Regulating or prohibiting the turning of vehicles at and between intersections.

10. Regulating the operation of bicycles and requiring the registration and licensing of the same, including the requirement of a registration fee. However, the regulations shall not conflict with the provisions of section 321.234.

11. Establishing speed limits in public alleys and providing the penalty for violation thereof.

12. Designating highways or portions of highways as snow routes. When conditions of snow or ice exist on the traffic surface of a designated snow route, it is unlawful for the driver of a vehicle to impede or block traffic if the driving wheels of the vehicle are not equipped with snow tires, tire chains or a nonslip differential. "Snow tires" as used in this subsection means tires designed for use when there are conditions of snow or ice on the highways, and meeting the standards which shall be promulgated by rule of the director of transportation. The standards promulgated by the director shall require that snow tires be so designed to provide adequate traction to maintain reasonable movement of the motor vehicle on highways under snow conditions.

Any person charged with impeding or blocking traffic for lack of snow tires, chains or nonslip differential shall have said charge dismissed upon a showing to the court that the person's motor vehicle was equipped with a nonslip differential.

13. Establishing a rural residence district. The board of supervisors of a county with respect to highways under its jurisdiction may establish, by ordinance or resolution, rural residence districts and may, by ordinance or resolution, regulate the speed and parking of vehicles within the rural residence district consistent with sections 321.239, 321.285, and 321.293. Before establishing a rural residence district, the board of supervisors shall hold a public hearing on the proposal, notice of which shall be published in a newspaper having a general circulation in the area where the proposed district is located at least twenty days before the date of hearing. The notice shall state the time and place of the hearing, the proposed location of the district, and other data considered pertinent by the board of supervisors.

95 Acts, ch 169, §2
1995 amendment to subsection 1, paragraph c, effective January 1, 1996;
95 Acts, ch 169, §10
Subsection 1, paragraph c amended

321.253B Metric signs restricted.

The department shall not place a sign relating to a speed limit, distance, or measurement on a highway if the sign establishes the speed limit, distance, or measurement solely by using the metric system, unless specifically required by federal law.

95 Acts, ch 118, §23
NEW section

321.284 Open containers in motor vehicles.

A person driving a motor vehicle shall not knowingly possess in a motor vehicle upon a public street or highway an open or unsealed bottle, can, jar, or other receptacle containing an alcoholic beverage, wine, or beer with the intent to consume the alcoholic beverage, wine, or beer while the motor vehicle is upon a public street or highway. Evidence that an open or unsealed receptacle containing an alcoholic beverage, wine, or beer was found during an authorized search in the glove compartment, utility compartment, console, front passenger seat, or any unlocked portable device and within the immediate

reach of the driver while the motor vehicle is upon a public street or highway is evidence from which the court or jury may infer that the driver intended to consume the alcoholic beverage, wine, or beer while upon the public street or highway if the inference is supported by corroborative evidence. However, an open or unsealed receptacle containing an alcoholic beverage, wine, or beer may be transported at any time in the trunk of the motor vehicle or in some other area of the interior of the motor vehicle not designed or intended to be occupied by the driver and not readily accessible to the driver while the motor vehicle is in motion. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8, subsection 10, paragraph "c".

95 Acts, ch 48, §5
NEW section

321.372 Discharging pupils — regulations.

1. The driver of a school bus used to transport children to and from a public or private school shall, when stopping to receive or discharge pupils, turn on flashing warning lamps at a distance of not less than three hundred feet nor more than five hundred feet from the point where the pupils are to be received or discharged from the bus if the speed limit at that point is forty-five miles per hour or greater and shall turn on flashing warning lamps at a distance of not less than one hundred fifty feet from the point where the pupils are to be received or discharged from the bus if the speed limit at that point is less than forty-five miles per hour. At the point of receiving or discharging pupils the driver of the bus shall bring the bus to a stop, turn off the amber flashing warning lamps, turn on the red flashing warning lamps, and extend the stop arm. After receiving or discharging pupils, the bus driver shall turn off all flashing warning lamps, retract the stop arm and proceed on the route. Except to the extent that reduced visibility is caused by fog, snow, or other weather conditions, a school bus shall not stop to receive or discharge pupils unless there is at least three hundred feet of unobstructed vision in each direction. However, the driver of a school bus is not required to use flashing warning lamps and the stop arm when receiving or discharging pupils at a designated loading and unloading zone at a school attendance center or at extracurricular or educational activity locations where students exiting the bus do not have to cross the street or highway.

If a school district contracts with an urban transit system to transport children to and from a public or private school, the school bus which is provided by the urban transit system shall not be required to be equipped with flashing warning lights and a stop arm. If the school bus provided by an urban transit system is equipped with flashing warning lights and a stop arm, the driver of the school bus shall use the flashing warning light and stop arm as required by law.

A school bus, when operating on a highway with four or more lanes shall not stop to load or unload

pupils who must cross the highway, except at designated stops where pupils who must cross the highway may do so at points where there are official traffic control devices or police officers.

A school bus shall, while carrying passengers, have its headlights turned on.

2. All pupils shall be received and discharged from the right front entrance of every school bus and if said pupils must cross the highway, they shall be required to pass in front of the bus, look in both directions, and proceed to cross the highway only on signal from the bus driver.

3. The driver of a vehicle, including the driver of a vehicle operating on a private road or driveway, when meeting a school bus with flashing amber warning lamps shall reduce the vehicle's speed to not more than twenty miles per hour, and shall bring the vehicle to a complete stop when the school bus stops and the stop signal arm is extended. The vehicle shall remain stopped until the stop signal arm is retracted after which time the driver may proceed with due caution.

The driver of a vehicle, including the driver of a vehicle operating on a private road or driveway, overtaking a school bus shall not pass a school bus when red or amber warning signal lights are flashing. The driver shall bring the vehicle to a complete stop no closer than fifteen feet from the school bus when it is stopped and the stop arm is extended, and the vehicle shall remain stopped until the stop arm is retracted and the school bus resumes motion.

4. The driver of a vehicle upon a highway providing two or more lanes in each direction need not stop upon meeting a school bus which is traveling in the opposite direction even though the school bus is stopped.

95 Acts, ch 118, §24

Subsection 1, unnumbered paragraph 1 amended

321.423 Flashing lights.

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

a. "*Emergency medical care provider*" means as defined in section 147A.1.

b. "*Fire department*" means a paid or volunteer fire protection service provided by a benefited fire district under chapter 357B or by a county, municipality or township, or a private corporate organization that has a valid contract to provide fire protection service for a benefited fire district, county, municipality, township or governmental agency.

c. "*Member*" means a person who is a member in good standing of a fire department or a person who is an emergency medical care provider employed by an ambulance, rescue, or first responder service.

2. *Prohibited lights.* A flashing light on or in a motor vehicle is prohibited except as follows:

a. On an authorized emergency vehicle.

b. On a vehicle as a means of indicating a right or left turn, a mechanical failure, or an emergency stop or intent to stop.

c. On a motor vehicle used by a rural mail carrier when stopping or stopped on or near a highway in the

process of delivering mail, if such a light is any shade of color between white and amber and if it is mounted as a dome light on the roof of the vehicle.

d. On a vehicle being operated under an excess size permit issued under chapter 321E.

e. A flashing blue light on a vehicle upon which a blue light is permitted pursuant to subsection 3 of this section.

f. A flashing white light is permitted on a vehicle pursuant to subsection 7.

g. A white flashing strobe light mounted on a school bus as permitted under section 321.373, subsection 7.

3. *Blue light.* A blue light shall not be used on any vehicle except for the following:

a. A vehicle owned or exclusively operated by a fire department.

b. A vehicle authorized by the chief of the fire department if the vehicle is owned by a member of the fire department, the request for authorization is made by the member on forms provided by the department, and necessity for authorization is demonstrated in the request.

4. *Expiration of authority.* The authorization shall expire at midnight on the thirty-first day of December five years from the year in which it was issued, or when the vehicle is no longer owned by the member, or when the member has ceased to be an active member of the fire department or of an ambulance, rescue, or first responder service or when the member has used the blue or white light beyond the scope of its authorized use. A person issued an authorization under subsection 3, paragraph "b", shall return the authorization to the fire chief upon expiration or upon a determination by the fire chief or the department that the authorization should be revoked.

5. *When used.* The certificate of authorization shall be carried at all times with the certificate of registration of the authorized vehicle and the operator of the vehicle shall not illuminate the blue or white light except in any of the following circumstances:

a. When the member is en route to the scene of a fire or is responding to an emergency in the line of duty requiring the services of the member.

b. When the authorized vehicle is transporting a person requiring emergency care.

c. When the authorized vehicle is at the scene of an emergency.

d. The use of the blue or white light in or on a private motor vehicle shall be for identification purposes only.

6. *Amber flashing light.* A farm tractor, farm tractor with towed equipment, self-propelled implement of husbandry, road construction or maintenance vehicle, road grader, or other vehicle principally designed for use off the highway which, when operated on a primary or secondary road, is operated at a speed of twenty-five miles an hour or less, shall be equipped with and display an amber flashing light visible from the rear at any time from sunset to

sunrise. If the amber flashing light is obstructed by the towed equipment, the towed equipment shall also be equipped with and display an amber flashing light as required under this subsection. All vehicles specified in this subsection which are manufactured for sale or sold in this state shall be equipped with an amber flashing light. The type, number, dimensions, and method of mounting of the lights shall be determined by the director. The director, when approving the light, shall be guided as far as practicable by the standards of the American society of agricultural engineers.

7. *Flashing white light.* Except as provided in section 321.373, subsection 7, and subsection 2, paragraph "c" of this section, a flashing white light shall only be used on a vehicle in the following circumstances:

a. On a vehicle owned or exclusively operated by an ambulance, rescue, or first responder service.

b. On a vehicle authorized by the director of public health when all of the following apply:

(1) The vehicle is owned by a member of an ambulance, rescue, or first responder service.

(2) The request for authorization is made by the member on forms provided by the Iowa department of public health.

(3) Necessity for authorization is demonstrated in the request.

(4) The head of an ambulance, rescue, or first responder service certifies that the member is in good standing and recommends that the authorization be granted.

c. On an authorized emergency vehicle.

The Iowa department of public health shall adopt rules to establish issuance standards, including allowing local emergency medical service providers to issue certificates of authorization, and shall adopt rules to establish certificate of authorization revocation procedures.

95 Acts, ch 41, §25; 95 Acts, ch 118, §25
Subsections 1, 3 and 4 amended

321.449 Motor carrier safety rules.

A person shall not operate a commercial vehicle on the highways of this state except in compliance with rules adopted by the department under chapter 17A. The rules shall be consistent with the federal motor carrier safety regulations promulgated under United States Code, Title 49, and found in 49 C.F.R. §§ 390-399 and adopted under chapter 17A which rules shall be to a date certain.

Rules adopted under this section concerning driver qualifications, hours of service, and recordkeeping requirements do not apply to the operators of public utility trucks, trucks hauling gravel, construction trucks and equipment, trucks moving implements of husbandry, and special trucks, other than a truck tractor, operating intrastate. Trucks for hire on construction projects are not exempt from this section.

Rules adopted under this section concerning driver age qualifications do not apply to drivers for private and for-hire motor carriers which operate solely in-

trastate except when the vehicle being driven is transporting a hazardous material in a quantity which requires placarding. The minimum age for the exempted intrastate operations is eighteen years of age.

Notwithstanding other provisions of this section, rules adopted under this section for drivers of commercial vehicles shall not apply to a driver of a commercial vehicle who is engaged exclusively in intrastate commerce, when the commercial vehicle's gross vehicle weight rating is 26,000 pounds or less, unless the vehicle is used to transport hazardous materials requiring a placard or if the vehicle is designed to transport more than fifteen passengers, including the driver. For the purpose of complying with the hours of service recordkeeping requirements under 49 C.F.R. § 395.1(e)(5), a driver's report of daily beginning and ending on-duty time submitted to the motor carrier at the end of each work week shall be considered acceptable motor carrier time records. In addition, rules adopted under this section shall not apply to a driver for a farm operation as defined in section 352.2, or for an agricultural interest when the commercial vehicle is operated between the farm as defined in section 352.2 and another farm, between the farm and a market for farm products, or between the farm and an agribusiness location. A driver or a driver-salesperson for a private carrier, who is not for hire and who is engaged exclusively in intrastate commerce, may drive twelve hours, be on duty sixteen hours in a twenty-four hour period and be on duty seventy hours in seven consecutive days or eighty hours in eight consecutive days. A driver-salesperson means as defined in 49 C.F.R. § 395.2, adopted as of a specific date by the department by rule.

Notwithstanding other provisions of this section, rules adopted under this section concerning physical and medical qualifications for drivers of commercial vehicles engaged in intrastate commerce shall not be construed as disqualifying any individual who was employed as a driver of commercial vehicles engaged in intrastate commerce prior to January 1, 1988.

Notwithstanding other provisions of this section, rules adopted under this section concerning physical and medical qualifications for a driver shall not apply to a farmer or a farmer's hired help when operating a vehicle owned by the farmer while it is being used in connection with the intrastate transportation of fertilizers and chemicals used in the farmer's crop production.

Notwithstanding other provisions of this section, rules adopted under this section concerning physical and medical qualifications for a driver shall not apply to a farmer or a farmer's hired help when operating a vehicle owned by the farmer while it is being used in connection with the intrastate transportation of agricultural commodities or feed.

Notwithstanding other provisions of this section, rules adopted under this section shall not impose any requirements which impose any restrictions upon a person operating an implement of husbandry or

pickup to transport fertilizers and pesticides in that person's agricultural operations.

Rules adopted under this section concerning periodic inspections shall not apply to special trucks as defined in section 321.1, subsection 76, and registered under section 321.121.

Rules adopted under this section shall not apply to vehicles used in combination provided the gross vehicle weight rating of the towing unit is ten thousand pounds or less and the gross combination weight rating is twenty-six thousand pounds or less.

95 Acts, ch 171, §1

Unnumbered paragraph 4 amended

321.454 Width of vehicles.

The total outside width of any vehicle or the load on the vehicle shall not exceed eight feet except that a motor home, commercial motor vehicle, motor truck or trailer hauling grain or livestock, travel trailer, fifth-wheel travel trailer, or bus having a total outside width not exceeding eight feet six inches, exclusive of safety equipment, is exempt from the permit requirements of chapter 321E and may be operated on the public highways of the state. However, if hay, straw, or stover is moved on any implement of husbandry and the total width of load of the implement of husbandry exceeds eight feet in width, the implement of husbandry is not subject to the permit requirements of chapter 321E. If hay, straw, or stover is moved on any other vehicle subject to registration, the moves are subject to the permit requirements for transporting loads exceeding eight feet in width as required under chapter 321E.

95 Acts, ch 67, §26

Section amended

321.463 Maximum gross weight — exceptions — penalties.

An axle may be divided into two or more parts, except that all parts in the same vertical transverse plane shall be considered as one axle.

The gross weight on any one axle of a vehicle, or of a combination of vehicles, operated on the highways of this state, shall not exceed twenty thousand pounds on an axle equipped with pneumatic tires, and shall not exceed fourteen thousand pounds on an axle equipped with solid rubber tires. The gross weight on any tandem axle of a vehicle, or any combination of vehicles, shall not exceed thirty-four thousand pounds on an axle equipped with pneumatic tires.

Notwithstanding other provisions of this chapter to the contrary, indivisible loads operating under the permit requirements of sections 321E.7, 321E.8, and 321E.9 shall be allowed a maximum of twenty thousand pounds per axle.

A group of two or more consecutive axles of any vehicle or combination of vehicles, shall not carry a load in pounds in excess of the overall gross weight determined by application of the following formula: W equals $500(LN/N-1 + 12N + 36)$. W equals the overall gross weight on any group of two or more consecutive axles to the nearest five hundred pounds,

L equals the distance in feet, rounded to the nearest whole foot, between the extreme of any group of two or more consecutive axles, and N equals the number of axles in the group under consideration. The following are exceptions to application of the formula:

1. Two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each providing the overall distance between the first and last axles of the consecutive sets of tandem axles is thirty-six feet or more.

2. On highways not part of the interstate system, a vehicle or combination of vehicles having:

a. Four axles where the extreme axles are eighteen feet apart may carry a gross load of fifty-three thousand pounds.

b. Five axles where the extreme axles are thirty-two feet apart may carry a gross load of sixty-seven thousand five hundred pounds.

c. Six or more axles where the extreme axles are forty-one feet apart may carry a gross load of seventy-eight thousand pounds.

For every foot of distance between extreme axles less than the above axle spacings, the overall gross weight of the vehicle or combination of vehicles shall be determined by deducting one thousand pounds from the gross loads specified in paragraphs "a", "b" and "c". All measurements between extreme axles shall be rounded to the nearest whole foot.

The maximum gross weight shall not exceed eighty thousand pounds.

The weight on any one axle, including a tandem axle, of a vehicle which is transporting livestock on highways not part of the interstate system may exceed the legal maximum weight given in this chapter providing that the gross weight on any particular group of axles on such vehicle does not exceed the gross weight allowable under this chapter for such groups of axles.

In addition, the weight on any one axle, including a tandem axle, of a vehicle which is transporting raw materials from a designated borrow site to a construction project or transporting raw materials from a construction project, may exceed the legal maximum weight otherwise allowed under this chapter by ten percent if the gross weight on any particular group of axles on the vehicle does not exceed the gross weight allowed under this chapter for that group of axles. However, if the vehicle exceeds the ten percent tolerance allowed for any one axle or tandem axle under this paragraph the fine to be assessed for the axle or tandem axle shall be computed on the difference between the actual weight and the ten percent tolerance weight allowed for the axle or tandem axle under this paragraph. This paragraph applies only to vehicles operating along a route of travel approved by the department.

A vehicle designed to tow wrecked or disabled vehicles shall be exempt from the weight limitations in this section while the vehicle is towing a wrecked or disabled vehicle.

A person who operates a vehicle in violation of the provisions of this section, and an owner, or any other

person, employing or otherwise directing the operator of a vehicle, who requires or knowingly permits the operation of a vehicle in violation of the provisions of this section shall be fined according to the following schedule:

**AXLE, TANDEM AXLE,
AND GROUP OF AXLES
WEIGHT VIOLATIONS**

Pounds Overloaded	Amount of Fine
Up to and including 1,000 pounds	\$10 plus one-half cent per pound
Over 1,000 pounds to and including 2,000 pounds	\$15 plus one-half cent per pound
Over 2,000 pounds to and including 3,000 pounds	\$80 plus three cents per pound
Over 3,000 pounds to and including 4,000 pounds	\$100 plus four cents per pound
Over 4,000 pounds to and including 5,000 pounds	\$150 plus five cents per pound
Over 5,000 pounds to and including 6,000 pounds	\$200 plus seven cents per pound
Over 6,000 pounds	\$200 plus ten cents per pound

Fines for gross weight violations for vehicles or combinations of vehicles shall be assessed at one-half of the fine rate schedule for axle, tandem axle, and groups of axles weight violations.

Except as otherwise provided, the amount of the fine to be assessed shall be computed on the difference between the actual weight and the maximum legal weight specified in this section by applying the appropriate rate in the preceding schedule for the total amount of overload.

The schedule of fines may be assessed in addition to any other penalties provided for in this chapter.

Overloads on axles and tandem axles and overloads on groups of axles or on an entire vehicle or combination of vehicles shall be considered as separate violations of the provisions of this section.

A person who issues or executes, or causes to be issued or executed, a bill of lading, manifest, or shipping document of any kind which states a false weight of the cargo set forth on such bill, manifest, or document, which is less than the actual weight of the cargo, shall, upon conviction, be guilty of a simple misdemeanor.

95 Acts, ch 118, §26
NEW unnumbered paragraph 3

321.484 Offenses by owners.

It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

The owner of a vehicle shall not be held responsible for a violation of a provision regulating the stopping, standing, or parking of a vehicle, whether the provision is contained in this chapter, or chapter 321L,

or an ordinance or other regulation or rule, if the owner establishes that at the time of the violation the vehicle was in the custody of an identified person other than the owner pursuant to a lease as defined in chapter 321F. The furnishing to the clerk of the district court where the charge is pending of a copy of the lease prescribed by section 321F.6 that was in effect for the vehicle at the time of the alleged violation shall be prima facie evidence that the vehicle was in the custody of an identified person other than the owner within the meaning of this paragraph, and the charge against the owner shall be dismissed. The clerk of the district court then shall cause a uniform citation and complaint to be issued against the lessee of the vehicle, and the citation shall be served upon the defendant by ordinary mail directed to the defendant at the address shown in the certificate of responsibility.*

If a peace officer as defined in section 801.4 has reasonable cause to believe the driver of a motor vehicle has violated sections 321.261, 321.262, 321.264, 321.341, 321.342, 321.343, 321.344, or 321.372, the officer may request any owner of the motor vehicle to supply information identifying the driver. When requested, the owner of the vehicle shall identify the driver to the best of the owner's ability. However, the owner of the vehicle is not required to supply identification information to the officer if the owner believes the information is self-incriminating.

95 Acts, ch 118, §27

*See §321F.6; "lease" probably intended; corrective legislation is pending
Unnumbered paragraph 2 amended

321.493 Liability for damages.

1. In all cases where damage is done by any motor vehicle by reason of negligence of the driver, and driven with the consent of the owner, the owner of the motor vehicle shall be liable for such damage. For purposes of this subsection, "owner" means the person to whom the certificate of title for the vehicle has been issued or assigned or to whom a manufacturer's or importer's certificate of origin for the vehicle has been delivered or assigned. However, if the vehicle is leased, "owner" means the person to whom the vehicle is leased, not the person to whom the certificate of title for the vehicle has been issued or assigned or to whom the manufacturer's or importer's certificate of origin for the vehicle has been delivered or assigned. For purposes of this subsection, "leased" means the transfer of the possession or right to possession of a vehicle to a lessee for a valuable consideration for a continuous period of twelve months or more, pursuant to a written agreement.

2. A person who has made a bona fide sale or transfer of the person's right, title, or interest in or to a motor vehicle and who has delivered possession of the motor vehicle to the purchaser or transferee shall not be liable for any damage thereafter resulting from negligent operation of the motor vehicle by another, but the purchaser or transferee to whom possession was delivered shall be deemed the owner. The provisions of subsection 2 of section 321.45 shall

not apply in determining, for the purpose of fixing liability under this subsection, whether such sale or transfer was made.

95 Acts, ch 136, §1
Section amended

321.556 Notice and hearing — findings and order.

1. If, upon review of the record of convictions of any person, the department determines that the person appears to be a habitual offender, the department shall immediately notify the person in writing and afford the licensee an opportunity for a hearing. The notice shall direct the person named in the notice to appear for hearing and show cause why the person should not be barred from operating a motor vehicle on the highways of this state. The notice shall meet the requirements of section 17A.12 and shall be served in the manner provided in that section. Service of notice on any nonresident of this state may be made in the same manner as provided in sections 321.498 through 321.506. A peace officer stopping a person for whom a notice to appear for hearing has been issued under the provisions of this section may personally serve the notice upon forms approved by the department to satisfy the notice requirements of this section. A peace officer may confiscate the motor vehicle license of a person if the license has been revoked or has been suspended subsequent to a hearing and the person has not forwarded the motor vehicle license to the department as required.

2. The hearing shall be conducted as provided in section 17A.12 before the department in the county where the alleged events occurred, unless the director and the person agree that the hearing may be held in some other county, or the hearing may be held by telephone conference at the discretion of the agency conducting the hearing. The hearing shall be recorded and its scope shall be limited to the issue of whether the person notified is a habitual offender.

3. An abstract certified by the director of transportation may be admitted as evidence as provided in section 622.43, at the hearing, and shall be prima facie evidence that the person named in the abstract was duly convicted by the court in which the conviction or holding was made of each offense shown by the abstract. If the person named in the abstract denies conviction of any of the relevant convictions contained in the abstract, the person shall have the burden of proving that the conviction is untrue. For purposes of this subsection, a conviction is relevant if it is for one of the offenses listed in section 321.555.

4. If the department finds that the person is not the same person named in the abstract, or otherwise concludes that the person is not a habitual offender as provided in section 321.555, the department shall issue a decision dismissing the proceedings. If the

department's findings and conclusions are that the person is a habitual offender, the department shall issue an order prohibiting the person from operating a motor vehicle on the highways of this state for the period specified in section 321.560. If a person is found to be a habitual offender, the person shall surrender all licenses or permits to operate a motor vehicle in this state to the department. A person who is found to be a habitual offender may be assessed a fee by the department to cover the costs of the habitual offender proceedings. Fees assessed shall be paid before the person may be issued a license or permit to operate a motor vehicle in this state.

95 Acts, ch 143, §2
Section stricken and rewritten

321.557 through 321.559 Repealed by 95 Acts, ch 143, § 13. See § 321.556.

321.560 Period of revocation.

A license to operate a motor vehicle in this state shall not be issued to any person declared to be a habitual offender under section 321.555, subsection 1, for a period of not less than two years nor more than six years from the date of the final decision of the department under section 17A.19 or the date on which the district court upholds the final decision of the department, whichever occurs later. However, a temporary restricted license may be issued to a person declared to be a habitual offender under section 321.555, subsection 1, paragraph "c", pursuant to section 321.215, subsection 2. A license to operate a motor vehicle in this state shall not be issued to any person declared to be a habitual offender under section 321.555, subsection 2, for a period of one year from the date of the final decision of the department under section 17A.19 or the date on which the district court upholds the final decision of the department, whichever occurs later. The department shall adopt rules under chapter 17A which establish a point system which shall be used to determine the period for which a person who is declared to be a habitual offender under section 321.555, subsection 1, shall not be issued a license.

95 Acts, ch 143, §3
Section amended

321.561 Punishment for violation.

It shall be unlawful for any person found to be a habitual offender to operate any motor vehicle in this state during the period of time specified in section 321.560 except for a habitual offender who has been granted a temporary restricted license pursuant to section 321.215, subsection 2. A person violating this section commits an aggravated misdemeanor.

95 Acts, ch 143, §4
Section amended

CHAPTER 321A

MOTOR VEHICLE FINANCIAL RESPONSIBILITY

321A.1 Definitions.

The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1. *Department.* "Department" means the state department of transportation.

2. *Judgment.* A judgment which has become final by expiration without appeal during the time within which an appeal might have been perfected, or a judgment if an appeal from the judgment has been perfected, which has not been stayed by the execution, filing and approval of a bond as provided in rule 7(a) of the rules of appellate procedure, or a judgment which has become final by affirmation on appeal, rendered by a court of competent jurisdiction of a state or of the United States, upon a cause of action arising out of the ownership, maintenance, or use of a motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of a person, or for damages because of injury to or destruction of property, including the loss of use of property, or upon a cause of action on an agreement of settlement for such damages.

3. *License.* A motor vehicle license as defined in section 321.1 issued under the laws of this state.

4. *Motor vehicle.* "Motor vehicle" means every vehicle which is self-propelled but not including vehicles known as trackless trolleys which are propelled by electric power obtained from overhead trolley wires, but not operated upon rails. The term "car" or "automobile" shall be synonymous with the term "motor vehicle".

5. *Nonresident.* Every person who is not a resident of this state.

6. *Nonresident operating privilege.* The privilege conferred upon a nonresident by the laws of this state pertaining to the operation by the nonresident of a motor vehicle, or the use of a motor vehicle owned by the nonresident, in this state.

7. *Operator.* A person who is in actual physical control of a motor vehicle whether or not that person has a motor vehicle license as required under the laws of this state.

8. *Owner.* "Owner" means a person who holds the legal title of a motor vehicle; however, if the motor vehicle is the subject of a security agreement with a right of possession in the debtor, the debtor shall be deemed the owner for purposes of this chapter or if the motor vehicle is leased as defined in section 321.493, the lessee shall be deemed the owner for purposes of this chapter.

9. *Person.* Every natural person, firm, copartnership, association, or corporation.

10. *Proof of financial responsibility.* Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of the proof, arising out of the ownership, maintenance, or use of a motor vehicle, in amounts as follows: With respect to accidents occurring on or after January 1, 1981, and prior to January 1, 1983, the amount of fifteen thousand dollars because of bodily injury to or death of one person in any one accident, and, subject to the limit for one person, the amount of thirty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and the amount of ten thousand dollars because of injury to or destruction of property of others in any one accident; and with respect to accidents occurring on or after January 1, 1983, the amount of twenty thousand dollars because of bodily injury to or death of one person in any one accident, and, subject to the limit for one person, the amount of forty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and the amount of fifteen thousand dollars because of injury to or destruction of property of others in any one accident.

11. *Registration.* Registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles.

12. *State.* Any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

95 Acts, ch 136, §2
Subsection 8 amended

321A.17 Proof required upon certain convictions.

1. Whenever the department, under any law of this state, suspends or revokes the license of any person upon receiving record of a conviction or a forfeiture of bail or revokes the license of any person pursuant to chapter 321J, the department shall also suspend the registration for all motor vehicles registered in the name of the person, except that the department shall not suspend the registration, unless otherwise required by law, if the person has previously given or immediately gives and thereafter maintains proof of financial responsibility with respect to all motor vehicles registered by the person.

2. Such license and registration shall remain suspended or revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under the motor vehicle laws of this state and not then unless and until the person shall give and thereafter maintain proof of financial responsibility.

3. If a person is not licensed, but by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the suspension or revocation of license, or for operating an unregistered motor vehicle upon the highways, no license shall be thereafter issued to such person and no motor vehicle shall continue to be registered or thereafter be registered in the name of such person until the person shall give and thereafter maintain proof of financial responsibility.

4. Whenever the department suspends or revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so suspended or revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility.

5. An individual applying for a motor vehicle license following a period of suspension or revocation under section 321.205 for a drug or drug-related offense, section 321.209, subsection 8, section 321.210, subsection 1, paragraph "d", or section 321.210A, 321.213A, 321.213B, 321.216B, or 321.513, following a period of suspension under section 321.194, or following a period of revocation under section 321J.2A, is not required to maintain proof of financial responsibility under this section.

6. This section does not apply to a commercial driver's licensee who is merely disqualified from operating a commercial motor vehicle under section 321.208 if the licensee's driver's license is not suspended or revoked.

95 Acts, ch 48, §6; 95 Acts, ch 55, §11
See Code editor's note to §13B.8
Subsection 5 amended

CHAPTER 321E

VEHICLES OF EXCESSIVE SIZE AND WEIGHT

321E.11 Daylight movement only — exceptions — holidays.

Movements by permit in accordance with this chapter shall be permitted only during the hours from sunrise to sunset unless the issuing authority determines that the movement can be better accomplished at another period of time because of traffic volume conditions or the vehicle subject to the permit has an overall length not to exceed one hundred feet, an overall width not to exceed eleven feet, and an overall height not to exceed fourteen feet, four inches, and the permit requires the vehicle to operate only on those highways designated by the department. Additional safety lighting and escorts may be required for movement at night.

Except as provided in section 321.457, no movement by permit shall be permitted on holidays, after twelve o'clock noon on days preceding holidays and holiday weekends, or special events when abnormally high traffic volumes can be expected. Such restrictions shall not be applicable to urban transit systems as defined in section 321.19, subsection 2. For the purposes of this chapter, holidays shall include Memorial Day, Independence Day, and Labor Day.

95 Acts, ch 67, §27; 95 Acts, ch 118, §28
See Code editor's note to §13B.8
Unnumbered paragraph 1 amended

CHAPTER 321F

LEASING AND RENTING OF VEHICLES

321F.6 Financial responsibility — lease.

The lessee shall carry in the vehicle being leased, evidence of financial responsibility as required by this chapter and a copy of the lease, setting forth the name and address of the lessee, period of the lease, and other information as the director may require.

The lease shall be shown to any peace officer upon request.

95 Acts, ch 118, §29
Section stricken and rewritten

321F.7 Certificate carried in vehicle. Repealed by 95 Acts, ch 118, § 38. See § 321F.6.

CHAPTER 321G

SNOWMOBILES AND ALL-TERRAIN VEHICLES

321G.1 Definitions.

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

1. "*All-terrain vehicle*" means a motorized flotation-tire vehicle with not less than three low pressure tires, but not more than six low pressure tires, that is limited in engine displacement to less than eight hundred cubic centimeters and in total dry weight to less than seven hundred fifty pounds and that has a seat or saddle designed to be straddled by the operator and handlebars for steering control.

2. "*A scale*" means the physical scale marked "A" graduated in decibels on a sound level meter which meets the requirements of the American national standards institute, incorporated, publication S1.4-1961, general purpose sound level meters.

3. "*Commission*" means the natural resource commission of the department.

4. "*Dealer*" means a person engaged in the business of buying, selling, or exchanging all-terrain vehicles or snowmobiles required to be registered under this chapter and who has an established place of business for that purpose in this state.

5. "*Department*" means the department of natural resources.

6. "*Established place of business*" means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the books and records are kept and the dealer's or manufacturer's business is primarily transacted.

7. "*Manufacturer*" means a person engaged in the business of constructing or assembling all-terrain vehicles or snowmobiles required to be registered under this chapter and who has an established place of business for that purpose in this state.

8. "*Measurable snow*" means one-tenth of one inch of snow.

9. "*Nonambulatory person*" means an individual with paralysis of the lower half of the body with the involvement of both legs, usually caused by disease or of injury to the spinal cord, or caused by the loss of both legs or the loss of a part of both legs.

10. "*Operate*" means to ride in or on, other than as a passenger, use, or control the operation of an all-terrain vehicle or snowmobile in any manner, whether or not the all-terrain vehicle or snowmobile is moving.

11. "*Operator*" means a person who operates or is

in actual physical control of an all-terrain vehicle or snowmobile.

12. "*Owner*" means a person, other than a lienholder, having the property right in or title to an all-terrain vehicle or snowmobile. The term includes a person entitled to the use or possession of an all-terrain vehicle or snowmobile subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

13. "*Person*" means an individual, partnership, firm, corporation, association, and the state, its agencies, and political subdivisions.

14. "*Public land*" means land owned by the federal government, the state, or political subdivisions of the state and land acquired or developed for public recreation pursuant to section 321G.7.

15. "*Railroad right of way*" shall mean the full width of property owned, leased or subject to easement for railroad purposes and shall not be limited to those areas on which tracks are located.

16. "*Roadway*" means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

17. "*Safety certificate*" means an all-terrain vehicle or snowmobile safety certificate issued by the commission to a qualified applicant who is twelve years of age or more.

18. "*Snowmobile*" means a motorized vehicle weighing less than one thousand pounds which uses sled-type runners or skis, endless belt-type tread, or any combination of runners, skis, or tread, and is designed for travel on snow or ice.

19. "*Special event*" means an organized race, exhibition, or demonstration of limited duration which is conducted according to a prearranged schedule and in which general public interest is manifested.

20. "*Street*" or "*highway*" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular travel, except in public areas in which the boundary shall be thirty-three feet each side of the center line of the roadway.

95 Acts, ch 177, §1

NEW subsection 14 and former subsections 14-19 renumbered as 15-20

CHAPTER 321J

OPERATING WHILE INTOXICATED

321J.2A Persons under the age of twenty-one.

A person who is under the age of twenty-one shall not operate a motor vehicle while having an alcohol concentration, as defined under section 321J.1, of .02 or more. The motor vehicle license or nonresident operating privilege of a person who is under the age of twenty-one and who operates a motor vehicle while having an alcohol concentration of .02 or more shall be revoked by the department for the period of time specified under section 321J.12. A revocation under this section shall not preclude a prosecution or conviction under any applicable criminal provisions of this chapter. However, if the person is convicted of a criminal offense under section 321J.2, the revocation imposed under this section shall be superseded by any revocation imposed as a result of the conviction.

In any proceeding regarding a revocation under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to be the alcohol concentration at the time of driving or being in physical control of the motor vehicle.

95 Acts, ch 48, §7
NEW section

321J.4 Revocation of license — ignition interlock devices — conditional temporary restricted license.

1. If a defendant is convicted of a violation of section 321J.2 and the defendant's motor vehicle license or nonresident operating privilege has not been revoked under section 321J.9 or 321J.12 for the occurrence from which the arrest arose, the department shall revoke the defendant's motor vehicle license or nonresident operating privilege for one hundred eighty days if the defendant has had no previous conviction or revocation under this chapter within the previous six years and the defendant shall not be eligible for any temporary restricted license for at least thirty days after the effective date of the revocation if a test was obtained, and for at least ninety days if a test was refused.

If a defendant is convicted of a violation of section 321J.2, and the defendant's motor vehicle license or nonresident operating privilege has not already been revoked under section 321J.9 or 321J.12 for the occurrence from which the arrest arose, the department shall revoke the defendant's motor vehicle license or nonresident operating privilege for one year if the defendant has had one or more previous convictions or revocations under this chapter within the previous six years. The defendant shall not be

eligible for any temporary restricted license during the entire one-year revocation period.

2. If the court defers judgment pursuant to section 907.3 for a violation of section 321J.2, and if the defendant's motor vehicle license or nonresident operating privilege has not been revoked under section 321J.9 or 321J.12, or has not otherwise been revoked for the occurrence from which the arrest arose, the department shall revoke the defendant's motor vehicle license or nonresident operating privilege for a period of not less than thirty days nor more than ninety days. The defendant shall not be eligible for any temporary restricted license for at least thirty days after the effective date of the revocation if a test was obtained and for at least ninety days if a test was refused.

3. *a.* Upon a plea or verdict of guilty of a third or subsequent violation of section 321J.2, the court shall order the department to revoke the defendant's motor vehicle license or nonresident operating privilege for a period of six years. The defendant shall not be eligible for a temporary restricted license for at least one year after the effective date of the revocation. The court shall require the defendant to surrender to it all Iowa licenses or permits held by the defendant, which the court shall forward to the department with a copy of the order for revocation.

b. After two years from the date of the order for revocation, the defendant may apply to the court for restoration of the defendant's eligibility for a motor vehicle license. The application may be granted only if all of the following are shown by the defendant by a preponderance of the evidence:

(1) The defendant has completed an evaluation and, if recommended by the evaluation, a program of treatment for chemical dependency and is recovering, or has substantially recovered, from that dependency on or tendency to abuse alcohol or drugs.

(2) The defendant has not been convicted, since the date of the revocation order, of any subsequent violations of section 321J.2 or 123.46, or any comparable city or county ordinance, and the defendant has not, since the date of the revocation order, submitted to a chemical test under this chapter that indicated an alcohol concentration as defined in section 321J.1 of .10 or more, or refused to submit to chemical testing under this chapter.

(3) The defendant has abstained from the excessive consumption of alcoholic beverages and the consumption of controlled substances, except at the direction of a licensed physician or pursuant to a valid prescription.

(4) The defendant's motor vehicle license is not currently subject to suspension or revocation for any other reason.

c. The court shall forward to the department a record of any application submitted under paragraph "b" and the results of the court's disposition of the application.

4. Upon a plea or verdict of guilty of a violation of section 321J.2 which involved a personal injury, the court shall determine in open court, from consideration of the information in the file and any other evidence the parties may submit, whether a serious injury was sustained by any person other than the defendant and, if so, whether the defendant's conduct in violation of section 321J.2 caused the serious injury. If the court so determines, the court shall order the department to revoke the defendant's motor vehicle license or nonresident operating privilege for a period of one year in addition to any other period of suspension or revocation. The defendant shall not be eligible for any temporary restricted license until the minimum period of ineligibility has expired under this section or section 321J.9, 321J.12, or 321J.20. The defendant shall surrender to the court any Iowa license or permit and the court shall forward it to the department with a copy of the order for revocation.

5. Upon a plea or verdict of guilty of a violation of section 321J.2 which involved a death, the court shall determine in open court, from consideration of the information in the file and any other evidence the parties may submit, whether a death occurred and, if so, whether the defendant's conduct in violation of section 321J.2 caused the death. If the court so determines, the court shall order the department to revoke the defendant's motor vehicle license or nonresident operating privilege for a period of six years. The defendant shall not be eligible for any temporary restricted license until the minimum period of ineligibility has expired under this section or section 321J.9, 321J.12, or 321J.20. The defendant shall surrender to the court any Iowa license or permit and the court shall forward it to the department with a copy of the order for revocation.

6. If a license or permit to operate a motor vehicle is revoked or denied under this section or section 321J.9 or 321J.12, the period of revocation or denial shall be the period provided for such a revocation or until the defendant reaches the age of eighteen whichever period is longer.

7. On a conviction for or as a condition of a deferred judgment for a violation of section 321J.2, the court may order the defendant to install ignition interlock devices of a type approved by the commissioner of public safety on all motor vehicles owned or operated by the defendant which, without tampering or the intervention of another person, would prevent the defendant from operating the motor vehicle with an alcohol concentration greater than a level set by rule of the commissioner of public safety. The commissioner of public safety shall adopt rules to approve certain ignition interlock devices and the means of installation of the devices, and shall establish the level of alcohol concentration beyond which an ignition interlock device will not allow operation of the motor vehicle in which it is installed. The order shall remain in effect for a period of time as determined by the court which shall not exceed the maximum term of imprisonment which the court could have imposed according to the nature of the violation.

While the order is in effect, the defendant shall not operate a motor vehicle which does not have an approved ignition interlock device installed. If the defendant's motor vehicle license or nonresident operating privilege has been revoked, the department shall not issue a temporary permit or a motor vehicle license to the person without certification that approved ignition interlock devices have been installed in all motor vehicles owned or operated by the defendant while the order is in effect. A defendant who fails within a reasonable time to comply with an order to install an approved ignition interlock device may be declared in contempt of court and punished accordingly. A person who tampers with or circumvents an ignition interlock device installed under a court order while an order is in effect commits a serious misdemeanor.

8. A person whose motor vehicle license has either been revoked under this chapter, or revoked or suspended under chapter 321 solely for violations of this chapter, or who has been determined to be a habitual offender under chapter 321 based solely on violations of this chapter, and who is not eligible for a temporary restricted license under this chapter may petition the court upon the expiration of the minimum period of ineligibility for a temporary restricted license provided for under this section or section 321J.9, 321J.12, or 321J.20 for an order to the department to require the department to issue a temporary restricted license to the person notwithstanding section 321.560. Upon the filing of a petition for a temporary restricted license under this section, the clerk of the district court in the county where the violation that resulted in the revocation occurred shall send notice of the petition to the department and the prosecuting attorney. The department and the prosecuting attorney shall each be given an opportunity to respond to and request a hearing on the petition. The court shall determine if the temporary restricted license is necessary for the person to maintain the person's present employment. However, a temporary restricted license shall not be ordered or issued for violations of section 321J.2A or to persons under the age of twenty-one who commit violations under section 321J.2. If the court determines that the temporary restricted license is necessary for the person to maintain the person's present employment, and that the minimum period of ineligibility for receipt of a temporary license has expired, the court shall order the department to issue to the person a temporary restricted license conditioned upon the person's certification to the court of the installation of approved ignition interlock devices in all motor vehicles that it is necessary for the person to operate to maintain the person's present employment. Section 321.561 does not apply to a person operating a motor vehicle in the manner permitted under this subsection. If the person operates a motor vehicle which does not have an approved ignition interlock device or if the person tampers with or circumvents an ignition interlock device, in addition to other penalties provided, the person's temporary restricted

license shall be revoked. A person holding a temporary restricted license issued under this subsection shall not operate a commercial motor vehicle, as defined in section 321.1, on a highway if a commercial driver's license is required for the person to operate the commercial motor vehicle.

95 Acts, ch 48, §§8-10; 95 Acts, ch 55, §12
See Code editor's note to §13B.8
Subsections 1, 2, 4, 5 and 8 amended
Subsection 3, paragraph a amended

321J.4A Surrender of registration and plates. Repealed by 95 Acts, ch 48, § 24.

321J.4B Motor vehicle impoundment or immobilization — penalty.

1. If a person is convicted of a second, third, or subsequent offense of operating while intoxicated, the court shall order that any motor vehicles owned by the person and used to commit the offense and any other motor vehicles used by the person in the commission of the offense be impounded or immobilized. For purposes of this section, "immobilized" means the installation of a device that completely prevents a motor vehicle from being operated, or the installation of an ignition interlock device, of a type approved by the commissioner of public safety, in a motor vehicle.

2. The order shall specify all of the following:

a. The motor vehicles that are subject to the order.

b. The period of impoundment or immobilization.

c. The person or agency responsible for carrying out the order requiring impoundment or immobilization of the motor vehicle. If a vehicle which is to be impounded or immobilized is in the custody of a law enforcement agency, the court shall designate that agency as the responsible agency. If the vehicle is not in the custody of a law enforcement agency, the person or agency responsible for carrying out the order shall be any person deemed appropriate by the court, including but not limited to a law enforcement agency with jurisdiction over the area in which the residence of the vehicle owner is located. The person or agency responsible for carrying out the order shall determine whether the motor vehicle shall be impounded or immobilized.

3. The period of impoundment or immobilization of a motor vehicle under this section shall be the period of license revocation imposed upon the person convicted of the offense or one hundred eighty days, whichever period is longer. The impoundment or immobilization period shall commence on the day that the vehicle is actually impounded or immobilized.

4. The clerk of the district court shall send a copy of the order to the department, the person convicted of the offense, the motor vehicle owner if the owner is not the person convicted, and the person or agency responsible for executing the order for impoundment or immobilization.

5. If the vehicle to be impounded or immobilized is in the custody of a law enforcement agency, the agency shall immobilize or impound the vehicle upon

receipt of the order, seize the motor vehicle's license plates and registration, and shall send or deliver the vehicle's license plates and registration to the department.

6. If the vehicle to be impounded or immobilized is not in the custody of a law enforcement agency, the person or agency designated in the order as the person or agency responsible for executing the order shall, upon receipt of the order, promptly locate the vehicle specified in the order, seize the motor vehicle and the license plates, and send or deliver the vehicle's license plates to the department.

7. If the vehicle is located at a place other than the place at which the impoundment or immobilization is to be carried out, the person or agency responsible for executing the order shall arrange for the vehicle to be moved to the place of impoundment or immobilization. When the vehicle is found, is impounded or immobilized, and is at the place of impoundment or immobilization, the person or agency responsible for executing the order shall notify the clerk of the date on which the order was executed. The clerk shall notify the department of the date on which the order was executed.

8. Upon receipt of the court order for impoundment or immobilization and seizure of the motor vehicle, if the agency responsible for carrying out the order determines that the motor vehicle is to be impounded, the agency shall review the value of the vehicle in relation to the costs associated with the period of impoundment of the motor vehicle specified in the order. If the agency determines that the costs of impoundment of the motor vehicle exceed the actual wholesale value of the motor vehicle, the agency may treat the vehicle as an abandoned vehicle pursuant to section 321.89. If the agency elects to treat the motor vehicle as abandoned, the agency shall notify the registered owner of the motor vehicle that the vehicle shall be deemed abandoned and shall be sold in the manner provided in section 321.89 if payment of the total cost of impoundment is not received within twenty-one days of the mailing of the notice. The agency shall provide documentation regarding the valuation of the vehicle and the costs of impoundment. This paragraph shall not apply to vehicles that are immobilized pursuant to this section or if subsection 15 or 16 applies.

9. The department shall destroy license plates received under this section and shall not authorize the release of the vehicle or the issuance of new license plates for the vehicle until the period of impoundment or immobilization has expired, and the fee and costs assessed under subsection 10 have been paid. The fee for issuance of new license plates and certificates of registration shall be the same as for the replacement of lost, mutilated, or destroyed license plates and certificates of registration.

10. Except where the person who is convicted of operating while intoxicated and being a second or subsequent offender is not lawfully in possession of the motor vehicle, the owner of any motor vehicle that is impounded or immobilized under this section shall

be assessed a fee of one hundred dollars plus the cost of any expenses for towing, storage, and any other costs of impounding or immobilizing the motor vehicle, to be paid to the clerk of the district court. The person or agency responsible for carrying out the order shall inform the court of the costs of towing, storage, and any other costs of impounding or immobilizing the motor vehicle. Upon payment of the fee and costs, the clerk shall forward a copy of the receipt to the department.

11. If a law enforcement agency impounds or immobilizes a motor vehicle, the amount of the fee and expenses deposited with the clerk shall be paid by the clerk to the law enforcement agency responsible for executing the order to reimburse the agency for costs incurred for impoundment or immobilization equipment and, if required, in sending officers to search for and locate the vehicle specified in the impoundment or immobilization order.

12. Operating a motor vehicle on a street or highway in this state in violation of an order of impoundment or immobilization is a serious misdemeanor. A motor vehicle which is subject to an order of impoundment or immobilization that is operated on a street or highway in this state in violation of the order shall be seized and forfeited to the state under chapter 809.

13. Once the period of impoundment or immobilization has expired, the owner of the motor vehicle shall have thirty days to claim the motor vehicle and pay the fees and charges imposed under this section. If the owner or the owner's designee has not claimed the vehicle and paid the fees and charges imposed under this section within seven days from the date of expiration of the period, the clerk shall send written notification to the motor vehicle owner, at the owner's last known address, notifying the owner of the date of expiration of the period of impoundment or immobilization and of the period in which the motor vehicle must be claimed. If the motor vehicle owner fails to claim the motor vehicle and pay the fees and charges imposed within the thirty-day period, the motor vehicle shall be forfeited to the state under chapter 809.

14. *a.* During the period of impoundment or immobilization, a person convicted of the offense of operating while intoxicated which resulted in the impoundment or immobilization shall not sell or transfer the title of the motor vehicle which is subject to the order of impoundment or immobilization. The person convicted of the offense of operating while intoxicated shall also not purchase another motor vehicle or register any motor vehicle during the period of impoundment or immobilization. Violation of this paragraph is a serious misdemeanor.

b. If, during the period of impoundment or immobilization, the title to the motor vehicle which is the subject of the order is transferred by the foreclosure of a chattel mortgage, a sale upon execution, the cancellation of a conditional sales contract, or an order of a court, the court which enters the order that permits transfer of the title shall notify the department of the transfer of the title. The department shall enter

notice of the transfer of the title to the motor vehicle in the previous owner's vehicle registration record.

15. Notwithstanding the requirements of this section, if the owner of the motor vehicle is not the person who is convicted of the offense which resulted in the issuance of the order of impoundment or immobilization or the owner of the motor vehicle is a motor vehicle rental or leasing company, the owner, the owner's designee, or the rental or leasing company shall be permitted to submit a claim for return of the motor vehicle within twenty-four hours from receipt of the order for impoundment or immobilization. Upon learning the address or phone number of a rental or leasing company which owns a motor vehicle, the peace officer, county attorney, or attorney general shall immediately contact the company to inform the company that the vehicle is available for return to the company. The vehicle shall be returned to the owner, owner's designee, or rental or leasing company and the order for impoundment or immobilization shall be rescinded with respect to the particular motor vehicle, if the owner or owner's designee can prove to the satisfaction of the court that the owner did not know or should not have known that the vehicle was to be used in the commission of the offense of operating while intoxicated, or if the rental or leasing company did not know, should not have known, and did not consent to the operation of the motor vehicle used in the commission of the offense of operating while intoxicated. For purposes of this section, unless the person convicted of the offense which results in the imposition of the order for impoundment or immobilization is not in lawful possession of the motor vehicle used in the commission of the offense, an owner of a motor vehicle shall be presumed to know that the vehicle was to be used by the person who is convicted of the offense, in the commission of the offense of operating while intoxicated.

16. Notwithstanding the requirements of this section, the holder of a security interest in a vehicle which is impounded or immobilized pursuant to this section or forfeited in the manner provided in chapter 809 shall be notified of the impoundment, immobilization, or forfeiture within seventy-two hours of the seizure of the vehicle and shall have the right to claim the motor vehicle without payment of any fees or surcharges unless the value of the vehicle exceeds the value of the security interest held by the creditor.

17. Notwithstanding the requirements of this section, any of the following persons may make application to the court for permission to operate a motor vehicle, which is impounded or immobilized pursuant to this section, during the period of impoundment or immobilization, if the applicant's motor vehicle license or operating privilege has not been suspended, denied, or revoked, and an ignition interlock device of a type approved by the commissioner of public safety is installed in the motor vehicle prior to operation:

a. A person, other than the person who committed the offense which resulted in the impoundment or immobilization, who is not a member of the imme-

mediate family of the person who committed the offense but is a joint owner of the motor vehicle.

b. A member of the immediate family of the person who committed the offense which resulted in the impoundment or immobilization, if the member demonstrates that the motor vehicle that is subject to the order for impoundment or immobilization is the only motor vehicle possessed by the family.

For purposes of this section, "a member of the immediate family" means a spouse, child, or parent of the person who committed the offense.

18. The impoundment, immobilization, or forfeiture of a motor vehicle under this chapter does not constitute loss of use of a motor vehicle for purposes of any contract of insurance.

95 Acts, ch 48, §11; 95 Acts, ch 143, §5

NEW section

Subsection 12 amended

321J.5 Preliminary screening test.

1. When a peace officer has reasonable grounds to believe that either of the following have occurred, the peace officer may request that the operator provide a sample of the operator's breath for a preliminary screening test using a device approved by the commissioner of public safety for that purpose:

a. A motor vehicle operator may be violating or has violated section 321J.2 or 321J.2A.

b. The operator has been involved in a motor vehicle collision resulting in injury or death.

2. The results of this preliminary screening test may be used for the purpose of deciding whether an arrest should be made or whether to request a chemical test authorized in this chapter, but shall not be used in any court action except to prove that a chemical test was properly requested of a person pursuant to this chapter.

95 Acts, ch 48, §12

Section amended

321J.6 Implied consent to test.

1. A person who operates a motor vehicle in this state under circumstances which give reasonable grounds to believe that the person has been operating a motor vehicle in violation of section 321J.2 or 321J.2A is deemed to have given consent to the withdrawal of specimens of the person's blood, breath, or urine and to a chemical test or tests of the specimens for the purpose of determining the alcohol concentration or presence of drugs, subject to this section. The withdrawal of the body substances and the test or tests shall be administered at the written request of a peace officer having reasonable grounds to believe that the person was operating a motor vehicle in violation of section 321J.2 or 321J.2A, and if any of the following conditions exist:

a. A peace officer has lawfully placed the person under arrest for violation of section 321J.2.

b. The person has been involved in a motor vehicle accident or collision resulting in personal injury or death.

c. The person has refused to take a preliminary breath screening test provided by this chapter.

d. The preliminary breath screening test was administered and it indicated an alcohol concentration as defined in section 321J.1 of .10 or more.

e. The preliminary breath screening test was administered to a person operating a commercial motor vehicle as defined in section 321.1 and it indicated an alcohol concentration of 0.04 or more.

f. The preliminary breath screening test was administered and it indicated an alcohol concentration of less than 0.10 and the peace officer has reasonable grounds to believe that the person was under the influence of a drug other than alcohol or a combination of alcohol and another drug.

g. The preliminary breath screening test was administered and it indicated an alcohol concentration of .02 or more but less than .10 and the person is under the age of twenty-one.

2. The peace officer shall determine which of the three substances, breath, blood, or urine, shall be tested. Refusal to submit to a chemical test of urine or breath is deemed a refusal to submit, and section 321J.9 applies. A refusal to submit to a chemical test of blood is not deemed a refusal to submit, but in that case, the peace officer shall then determine which one of the other two substances shall be tested and shall offer the test. If the peace officer fails to offer a test within two hours after the preliminary screening test is administered or refused or the arrest is made, whichever occurs first, a test is not required, and there shall be no revocation under section 321J.9.

3. Notwithstanding subsection 2, if the peace officer has reasonable grounds to believe that the person was under the influence of a drug other than alcohol or a combination of alcohol and another drug, a urine test may be required even after a blood or breath test has been administered. Section 321J.9 applies to a refusal to submit to a chemical test of urine requested under this subsection.

95 Acts, ch 48, §13, 14

Subsection 1, unnumbered paragraph 1 amended

Subsection 1, NEW paragraph g

321J.8 Statement of officer.

A person who has been requested to submit to a chemical test shall be advised by a peace officer of the following:

1. If the person refuses to submit to the test, the person's motor vehicle license or nonresident operating privilege will be revoked by the department as required by and for the applicable period specified under section 321J.9.

2. If the person submits to the test and the results indicate an alcohol concentration as defined in section 321J.1 of .10 or more, or the person is under the age of twenty-one and the results indicate an alcohol concentration of .02 or more, but less than .10, the person's motor vehicle license or nonresident operating privilege will be revoked by the department as required by and for the applicable period specified under section 321J.12.

3. If the person is operating a commercial motor vehicle as defined in section 321.1 and either refuses

to submit to the test or submits to the test and the results indicate an alcohol concentration of 0.04 or more, the person is disqualified from operating a commercial motor vehicle for the applicable period under section 321.208 in addition to any revocation of the person's motor vehicle license or nonresident operating privilege which may be applicable under this chapter.

This section does not apply in any case involving a person described in section 321J.7.

95 Acts, ch 48, §15
Section amended

321J.9 Refusal to submit — revocation.

1. If a person refuses to submit to the chemical testing, a test shall not be given, but the department, upon the receipt of the peace officer's certification, subject to penalty for perjury, that the officer had reasonable grounds to believe the person to have been operating a motor vehicle in violation of section 321J.2 or 321J.2A, that specified conditions existed for chemical testing pursuant to section 321J.6, and that the person refused to submit to the chemical testing, shall revoke the person's motor vehicle license and any nonresident operating privilege for the following periods of time:

a. Two hundred forty days if the person has no previous revocation within the previous six years under this chapter; and

b. Five hundred forty days if the person has one or more previous revocations within the previous six years under this chapter.

2. A person whose motor vehicle license or nonresident operating privileges are revoked for two hundred forty days under subsection 1, paragraph "a", shall not be eligible for a temporary restricted license for at least ninety days after the effective date of the revocation. A person whose motor vehicle license or nonresident operating privileges are revoked for five hundred forty days under subsection 1, paragraph "b", shall not be eligible for a temporary restricted license for at least one year after the effective date of the revocation.

3. If the person is a resident without a license or permit to operate a motor vehicle in this state, the department shall deny to the person the issuance of a license or permit for the same period a license or permit would be revoked, and deny issuance of a temporary restricted license for the same period of ineligibility for receipt of a temporary restricted license, subject to review as provided in this chapter.

4. The effective date of revocation shall be ten days after the department has mailed notice of revocation to the person by certified mail or, on behalf of the department, a peace officer offering or directing the administration of a chemical test may serve immediate notice of intention to revoke and of revocation on a person who refuses to permit chemical testing. If the peace officer serves that immediate notice, the peace officer shall take the Iowa license or permit of the driver, if any, and issue a temporary license effective for only ten days. The peace officer

shall immediately send the person's license to the department along with the officer's certificate indicating the person's refusal to submit to chemical testing.

95 Acts, ch 48, §16
Section amended

321J.12 Test result revocation.

1. Upon certification, subject to penalty for perjury, by the peace officer that there existed reasonable grounds to believe that the person had been operating a motor vehicle in violation of section 321J.2, that there existed one or more of the necessary conditions for chemical testing described in section 321J.6, subsection 1, and that the person submitted to chemical testing and the test results indicated an alcohol concentration as defined in section 321J.1 of .10 or more, the department shall revoke the person's motor vehicle license or nonresident operating privilege for the following periods of time:

a. One hundred eighty days if the person has had no revocation within the previous six years under this chapter.

b. One year if the person has had one or more previous revocations within the previous six years under this chapter.

2. A person whose motor vehicle license or nonresident operating privileges have been revoked under subsection 1, paragraph "a", shall not be eligible for any temporary restricted license for at least thirty days after the effective date of the revocation. A person whose license or privileges have been revoked under subsection 1, paragraph "b", for one year shall not be eligible for any temporary restricted license for one year after the effective date of the revocation.

3. The effective date of the revocation shall be ten days after the department has mailed notice of revocation to the person by certified mail. The peace officer who requested or directed the administration of the chemical test may, on behalf of the department, serve immediate notice of revocation on a person whose test results indicated an alcohol concentration of .10 or more.

4. If the peace officer serves that immediate notice, the peace officer shall take the person's Iowa license or permit, if any, and issue a temporary license valid only for ten days. The peace officer shall immediately send the person's driver's license to the department along with the officer's certificate indicating that the test results indicated an alcohol concentration of .10 or more.

5. Upon certification, subject to penalty for perjury, by the peace officer that there existed reasonable grounds to believe that the person had been operating a motor vehicle in violation of section 321J.2A, that there existed one or more of the necessary conditions for chemical testing described in section 321J.6, subsection 1, and that the person submitted to chemical testing and the test results indicated an alcohol concentration as defined in section 321J.1 of .02 or more but less than .10, the

department shall revoke the person's motor vehicle license or operating privilege for a period of sixty days if the person has had no revocations within the previous six years under section 321J.2A, and for a period of ninety days if the person has had one or more previous revocations within the previous six years under section 321J.2A.

6. The results of a chemical test may not be used as the basis for a revocation of a person's motor vehicle license or nonresident operating privilege if the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal an alcohol concentration of .10 or more for violations under section 321J.2 or of .02 or more for violations of section 321J.2A.

95 Acts, ch 48, §17; 95 Acts, ch 143, §12
Section amended

321J.13 Hearing on revocation — appeal.

1. Notice of revocation of a person's motor vehicle license or operating privilege served pursuant to section 321J.9 or 321J.12 shall include a form accompanied by a preaddressed envelope on which the person served may indicate by a checkmark if the person only wishes to request a temporary restricted license after the mandatory ineligibility period for issuance of a temporary restricted license has ended, or if the person wishes a hearing to contest the revocation. The form shall clearly state on its face that the form must be completed and returned within ten days of receipt or the person's right to a hearing to contest the revocation is foreclosed. The form shall also be accompanied by a statement of the operation of and the person's rights under this chapter.

2. The department shall grant the person an opportunity to be heard within forty-five days of receipt of a request for a hearing if the request is made not later than ten days after receipt of notice of revocation served pursuant to section 321J.9 or 321J.12. The hearing shall be before the department in the county where the alleged events occurred, unless the director and the person agree that the hearing may be held in some other county, or the hearing may be held by telephone conference at the discretion of the agency conducting the hearing. The hearing may be recorded and its scope shall be limited to the issues of whether a peace officer had reasonable grounds to believe that the person was operating a motor vehicle in violation of section 321J.2 or section 321J.2A and either of the following:

a. Whether the person refused to submit to the test or tests.

b. Whether a test was administered and the test results indicated an alcohol concentration as defined in section 321J.1 of .10 or more or whether a test was administered and the test results indicated an alcohol concentration as defined in section 321J.1 of .02 or more pursuant to section 321J.2A.

3. After the hearing the department shall order that the revocation be either rescinded or sustained. Upon receipt of the decision of the department to

sustain a revocation, the person contesting the revocation has ten days to file a request for review of the decision by the director. The director or the director's designee shall review the decision within fifteen days and shall either rescind or sustain the revocation or order a new hearing. If the director orders a new hearing, the department shall grant the person a new hearing within twenty days of the director's order.

4. A person whose motor vehicle license or operating privilege has been or is being revoked under section 321J.9 or 321J.12 may reopen a department hearing on the revocation if the person submits a petition stating that new evidence has been discovered which provides grounds for rescission of the revocation, or prevail at the hearing to rescind the revocation, if the person submits a petition stating that a criminal action on a charge of a violation of section 321J.2 filed as a result of the same circumstances which resulted in the revocation has resulted in a decision in which the court has held that the peace officer did not have reasonable grounds to believe that a violation of section 321J.2 or 321J.2A had occurred to support a request for or to administer a chemical test or which has held the chemical test to be otherwise inadmissible or invalid. Such a decision by the court is binding on the department and the department shall rescind the revocation.

5. The department shall stay the revocation of a person's motor vehicle license or operating privilege for the period that the person is contesting the revocation under this section or section 321J.14 if it is shown to the satisfaction of the department that the new evidence is material and that there were valid reasons for failure to present it in the contested case proceeding before the department. However, a stay shall not be granted for violations of section 321J.2A.

6. If the department fails to comply with the time limitations of this section regarding granting a hearing, review by the director or the director's designee, or granting a new hearing, and if the request for a hearing or review by the director was properly made under this section, the revocation of the motor vehicle license or operating privilege of the person who made the request for a hearing or review shall be rescinded. This subsection shall not apply in those cases in which a continuance to the hearing has been granted at the request of either the person who requested the hearing or the peace officer who requested or administered the chemical test.

95 Acts, ch 48, §18
Subsections 1, 2, 3, 4 and 5 amended

321J.15 Evidence in any action.

Upon the trial of a civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating a motor vehicle in violation of section 321J.2 or 321J.2A, evidence of the alcohol concentration or the presence of drugs in the person's body substances at the time of the act alleged as shown by a chemical analysis of the person's blood, breath, or urine is admissible. If it is

established at trial that an analysis of a breath specimen was performed by a certified operator using a device and methods approved by the commissioner of public safety, no further foundation is necessary for introduction of the evidence.

95 Acts, ch 48, §19
Section amended

321J.16 Proof of refusal admissible.

If a person refuses to submit to a chemical test, proof of refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating a motor vehicle in violation of section 321J.2 or 321J.2A.

95 Acts, ch 48, §20
Section amended

321J.17 Civil penalty — disposition — reinstatement.

When the department revokes a person's motor vehicle license or nonresident operating privilege under this chapter, the department shall assess the person a civil penalty of two hundred dollars. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit one-half of the money in the separate fund established in section 912.14 and one-half of the money shall be deposited in the general fund of the state. A motor vehicle license or nonresident operating privilege shall not be reinstated until the civil penalty has been paid.

95 Acts, ch 143, §6
Section amended

321J.20 Temporary restricted license.

1. The department may, on application, issue a temporary restricted license to a person whose motor vehicle license is revoked under this chapter allowing the person to drive to and from the person's home and specified places at specified times which can be verified by the department and which are required by the person's full-time or part-time employment, continuing health care or the continuing health care of another who is dependent upon the person, continuing education while enrolled in an educational institution on a part-time or full-time basis and while pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion, substance abuse treatment, and court-ordered community service responsibilities if the person's motor vehicle license has not been revoked under section 321J.4, 321J.9, or 321J.12 within the previous six years and if any of the following apply:

a. The person's motor vehicle license is revoked under section 321J.4, subsection 1, 2, 4, or 6, and the minimum period of ineligibility for issuance of a temporary restricted license has expired.

b. The person's motor vehicle license is revoked under section 321J.9 and the person has entered a plea of guilty on a charge of a violation of section 321J.2 which arose from the same set of circum-

stances which resulted in the person's motor vehicle license revocation under section 321J.9 and the guilty plea is not withdrawn at the time of or after application for the temporary restricted license, and the minimum period of ineligibility for issuance of a temporary restricted license has expired.

c. The person's motor vehicle license is revoked under section 321J.12, and the minimum period of ineligibility for issuance of a temporary restricted license has expired.

However, a temporary restricted license may be issued if the person's motor vehicle license is revoked under section 321J.9, and the revocation is a second revocation under this chapter, and the first three hundred and sixty-five days of the revocation have expired.

2. This section does not apply to a person whose license was revoked under section 321J.2A or section 321J.4, subsection 3 or 5, or to a person whose license is suspended or revoked for another reason.

3. A person holding a temporary restricted license issued by the department under this section shall not operate a motor vehicle for pleasure.

4. A person holding a temporary restricted license issued by the department under this section shall not operate a commercial motor vehicle on a highway if a commercial driver's license is required for the person's operation of the commercial motor vehicle. However, this subsection does not apply if the temporary restricted license was issued as a result of a violation of this chapter while the person was operating a vehicle other than a commercial motor vehicle.

5. A person holding a temporary license issued by the department under this chapter shall be prohibited from operating a school bus.

6. Following the minimum period of ineligibility, a temporary restricted license under this section shall not be issued until such time as the applicant installs an ignition interlock device of a type approved by the commissioner of public safety on all motor vehicles owned or operated by the applicant, in accordance with section 321J.4, subsection 7. Installation of an ignition interlock device under this section shall be required for the period of time for which the temporary restricted license is issued, but no longer than one year, unless the court order under section 321J.4, subsection 7, provides for a longer period of time.

95 Acts, ch 48, §21; 95 Acts, ch 143, §7
Subsections 1 and 2 amended
NEW subsection 6

321J.25 Youthful offender substance abuse awareness program.

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

a. "Participant" means a person whose motor vehicle license or operating privilege has been revoked for a violation of section 321J.2A.

b. "Program" means a substance abuse awareness program provided under a contract entered into

between the provider and the commission on substance abuse of the Iowa department of public health under chapter 125.

c. "Program coordinator" means a person assigned the duty to coordinate a participant's activities in a program by the program provider.

2. A substance abuse awareness program is established in each of the regions established by the commission on substance abuse. The program shall consist of an insight class and a substance abuse evaluation, which shall be attended by the participant, to discuss issues related to the potential consequences of substance abuse. The parent or parents of the participant shall also be encouraged to participate in the program. The program provider shall consult with the participant or the parents of the participant in the program to determine the timing and appropriate level of participation for the participant and any participation by the participant's parents. The program may also include a supervised educational tour by the participant to any or all of the following:

a. A hospital or other emergency medical care facility which regularly receives victims of motor vehicle accidents, to observe treatment of appropriate victims of motor vehicle accidents involving intoxicated drivers, under the supervision of a registered nurse, physician, paramedic, or emergency medical technician.

b. A facility for the treatment of chemical substance abuse as defined in section 125.2, under the supervision of appropriately licensed medical personnel.

c. If approved by the state or county medical examiner, a morgue or a similar facility to receive appropriate educational material and instruction concerning damage caused by the consumption of alcohol or other drugs, under the supervision of the county medical examiner or deputy medical examiner.

3. If the program includes a tour, the program coordinator shall explain and discuss the experiences which may be encountered during the tour to the

participant. If the program coordinator determines at any time before or during a tour that the tour may be traumatic or otherwise inappropriate for the participant, the program coordinator shall terminate the tour without prejudice to the participant.

4. Upon the revocation of the motor vehicle license or operating privileges of a person who is fourteen years of age or older for a violation of section 321J.2A, if the person has had no previous revocations under either section 321J.2 or section 321J.2A, a person may participate in the substance abuse awareness program. The state department of transportation shall notify a potential program participant of the possibility and potential benefits of attending a program and shall notify a potential program participant of the availability of programs which exist in the area in which the person resides. The state department of transportation shall consult with the Iowa department of public health to determine what programs are available in various areas of the state. The period of revocation for a person whose motor vehicle license or operating privilege has been revoked under section 321J.2A, shall be reduced by fifty percent upon receipt by the state department of transportation of a certification by a program provider that the person has completed a program.

5. Program providers and facilities toured during the program are not liable for any civil damages resulting from injury to the participant, or civil damages caused by the participant during or from any activities related to a tour, except for willful or grossly negligent acts intended to, or reasonably expected to result in, such injury or damage.

6. The program provider shall determine fees to be paid by participants in the program. The program fees shall be paid on a sliding scale, based upon the ability of a participant and a participant's family to pay the fees, and shall not exceed one hundred dollars per participant. The program provider shall use the fees to pay all costs associated with the program.

95 Acts, ch 143, §8
NEW section

CHAPTER 321L

HANDICAPPED PARKING

Issuance of handicapped identification devices by certain county treasurers; see §321.179

321L.2 Handicapped identification devices — application and issuance.

1. *a.* A handicapped resident of the state desiring a handicapped identification device shall apply to the department upon an application form furnished by the department providing the applicant's name, address, date of birth, and social security number and shall also provide a statement from a physician li-

censed under chapter 148, 149, 150, or 150A, or a chiropractor licensed under chapter 151, or a physician or chiropractor licensed to practice in a contiguous state, written on the physician's or chiropractor's stationery, stating the nature of the applicant's handicap and such additional information as required by rules adopted by the department under section 321L.8. Handicapped registration plates

must be ordered pursuant to section 321.34, subsection 7. A handicapped person may apply for either one temporary or one permanent handicapped identification hanging device. Persons who seek a permanent handicapped identification device shall be required to furnish evidence upon initial application that they are permanently handicapped. A person who has provided satisfactory evidence to the department that the person is permanently handicapped shall not be required to furnish evidence of being handicapped at a later date, unless the department deems it necessary. Persons who seek only temporary handicapped identification stickers or hanging devices shall be required to furnish evidence upon initial application that they are temporarily handicapped and, in addition, furnish evidence at three-month intervals that they remain temporarily handicapped. Temporary handicapped identification stickers and hanging devices shall be of a distinctively different color from permanent handicapped identification stickers and hanging devices.

b. The department may issue permanent handicapped identification hanging devices to the following in accordance with rules adopted by the department:

(1) An organization which has a program for transporting the handicapped or elderly.

(2) A person in the business of transporting the handicapped or elderly.

One handicapped identification hanging device may be issued for each vehicle used by the organization or person for transporting the handicapped or elderly. A handicapped identification hanging device issued under this paragraph shall be surrendered to the department if the organization or person is no longer providing the service for which the device was issued. Notwithstanding section 321L.4, a person transporting handicapped or elderly in a motor vehicle for which a handicapped identification hanging device has been issued under this paragraph may display the device in the motor vehicle and may use a handicapped parking space while the motor vehicle is displaying the device. A handicapped identification hanging device issued under this paragraph shall be of a distinctively different color from the handicapped identification hanging devices issued

under paragraph "a".

c. A new handicapped identification device can be issued if the previously issued device is reported lost, stolen, or damaged. The device reported as being lost or stolen shall be invalidated by the department. A device which is damaged shall be returned to the department and exchanged for a new device in accordance with rules adopted by the department.

2. Any person providing false information with the intent to defraud on the application for a handicapped identification device or on the physician's or chiropractor's statement used in establishing proof under subsection 1 is subject to a civil penalty of one hundred dollars which may be imposed by the department, or subject to invalidation by the department of the device issued to the individual, or subject to both the civil penalty and invalidation.

3. Each handicapped identification device shall be acquired by handicapped persons upon application on forms prescribed by the department. Before delivering a handicapped identification device to a handicapped person the department shall permanently affix to the device a unique number which may be used by the department to identify the individual to whom the device is issued. A temporary handicapped identification hanging device shall have the expiration date permanently affixed to the device. Expiration dates and identification numbers affixed to handicapped identification hanging devices shall be of sufficient size to be readable from outside the vehicle.

A handicapped person who owns a motor vehicle for which the handicapped person has been issued radio operator registration plates under section 321.34, subsection 3, or registration plates as a seriously disabled veteran under section 321.105 may apply to the department for a handicapped identification sticker to be affixed to the plates. The handicapped identification stickers shall bear the international symbol of accessibility. The handicapped identification stickers shall be acquired by eligible handicapped persons upon application on forms prescribed by the department.

95 Acts, ch 118, §30
Subsection 3 amended

CHAPTER 322G

DEFECTIVE MOTOR VEHICLES (LEMON LAW)

322G.2 Definitions.

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

1. "*Collateral charges*" means those additional charges to a consumer wholly incurred as a result of the acquisition of the motor vehicle. For the purposes of this chapter, collateral charges include, but are not limited to, charges for manufacturer-installed or agent-installed items, earned finance charges, use taxes, and title charges.

2. "*Condition*" means a general problem that may be attributable to a defect in more than one part.

3. "*Consumer*" means the purchaser or lessee, other than for purposes of lease or resale, of a new or previously untitled motor vehicle, or any other person entitled by the terms of the warranty to enforce the obligations of the warranty during the duration of the lemon law rights period.

4. "*Days*" means calendar days.

5. "*Department*" means the attorney general.

6. *"Incidental charges"* means those reasonable costs incurred by the consumer, including, but not limited to, towing charges and the costs of obtaining alternative transportation, which are the direct result of the nonconformity or nonconformities which are the subject of the claim. Incidental charges do not include loss of use, loss of income, or personal injury claims.

7. *"Lease price"* means the aggregate of the following:

- a. Lessor's actual purchase costs.
- b. Collateral charges, if applicable.
- c. Any fee paid to another to obtain the lease.
- d. Any insurance or other costs expended by the lessor for the benefit of the lessee.
- e. An amount equal to state and local use taxes, not otherwise included as collateral charges, paid by the lessor when the vehicle was initially purchased.
- f. An amount equal to five percent of the lessor's actual purchase cost.

8. *"Lemon law rights period"* means the term of the manufacturer's written warranty, the period ending two years after the date of the original delivery of a motor vehicle to a consumer, or the first twenty-four thousand miles of operation attributable to a consumer, whichever expires first.

9. *"Lessee"* means any consumer who leases a motor vehicle for one year or more pursuant to a written lease agreement which provides that the lessee is responsible for repairs to the motor vehicle.

10. *"Lessee cost"* means the aggregate of the deposit and rental payments previously paid to the lessor for the leased vehicle.

11. *"Lessor"* means a person who holds the title to a motor vehicle leased to a lessee under a written lease agreement or who holds the lessor's rights under the agreement.

12. *"Manufacturer"* means a person engaged in the business of constructing or assembling new motor vehicles or installing on previously assembled vehicle chassis special bodies or equipment which, when installed, form an integral part of the new motor vehicle, or a person engaged in the business of importing new motor vehicles into the United States for the purpose of selling or distributing the new motor vehicles to new motor vehicle dealers.

13. *"Motor vehicle"* means a self-propelled vehicle purchased or leased in this state, except as provided in section 322G.15, and primarily designed for the transportation of persons or property over public streets and highways, but does not include mopeds, motorcycles, motor homes, or vehicles over ten thousand pounds gross vehicle weight rating.

14. *"Nonconformity"* means a defect, malfunction, or condition in a motor vehicle such that the vehicle fails to conform to the warranty, but does not include a defect, malfunction, or condition that results from an accident, abuse, neglect, modification, or alteration of the motor vehicle by persons other than the manufacturer or its authorized service agent.

15. *"Person"* means person as defined in section 714.16.

16. *"Program"* means an informal dispute settlement procedure established by a manufacturer which mediates and arbitrates motor vehicle warranty disputes arising in this state.

17. *"Purchase price"* means the cash price paid for the motor vehicle appearing in the sales agreement or contract, including any net allowance given for a trade-in vehicle.

18. *"Reasonable offset for use"* means the number of miles attributable to a consumer up to the date of the third attempt to repair the same nonconformity which is the subject of the claim, or the first attempt to repair a nonconformity that is likely to cause death or serious bodily injury, or the twentieth cumulative day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first, multiplied by the purchase price of the vehicle, or in the event of a leased vehicle, the lessor's actual lease price plus an amount equal to two percent of the purchase price, and divided by one hundred twenty thousand.

19. *"Replacement motor vehicle"* means a motor vehicle which is identical or reasonably equivalent to the motor vehicle to be replaced, and as the motor vehicle to be replaced would have existed without the nonconformity at the time of original acquisition.

20. *"Substantially impair"* means to render the motor vehicle unfit, unreliable, or unsafe for warranted or ordinary use, or to significantly diminish the value of the motor vehicle.

21. *"Warranty"* means any written warranty issued by the manufacturer; or any affirmation of fact or promise made by the manufacturer, excluding statements made by the dealer, in connection with the sale or lease of a motor vehicle to a consumer, which relates to the nature of the material or workmanship and affirms or promises that the material or workmanship is free of defects or will meet a specified level of performance.

95 Acts, ch 45, §6
Subsection 13 amended

322G.11 Dealer liability.

This chapter, except for the requirements of section 322G.12, does not impose any liability on a franchised motor vehicle dealer or create a cause of action by a consumer against a dealer. A dealer shall not be made a party defendant in any action involving or relating to this chapter, except as provided in this section. The manufacturer shall not charge back or require reimbursement by the dealer for any costs, including but not limited to any refunds or vehicle replacements, incurred by the manufacturer pursuant to this chapter, in the absence of a finding by a court that the related repairs had been carried out by the dealer in a manner substantially inconsistent with the manufacturer's published instructions. A manufacturer who is found by a court to have improperly charged back a dealer because of a violation of this section is liable to the injured dealer for full reimbursement plus reasonable costs and any attorney's fees.

95 Acts, ch 45, §7
Section amended

322G.12 Resale of returned vehicles.

Subsequent to December 31, 1991, a manufacturer who accepts the return of a motor vehicle pursuant to a settlement, determination, or decision under this chapter shall notify the state department of transportation and report the vehicle identification number of that motor vehicle within ten days after the acceptance. The state department of transportation shall note the fact that the motor vehicle was returned pursuant to this chapter on the title for the motor vehicle. A person shall not knowingly lease; or sell, either at wholesale or retail; or transfer a title to a motor vehicle returned by reason of a settlement, determination, or decision pursuant to this chapter or a similar statute of any other state unless the nature of the nonconformity is clearly and conspicuously disclosed to the prospective transferee, lessee, or buyer. The attorney general shall prescribe by rule the form, content, and procedure pertaining to such a disclosure statement, recognizing the need of manufacturers to implement a uniform disclosure form. The manufacturer shall make a reasonable effort to ensure that such disclosure is made to the first subsequent retail buyer or lessee. For purposes of this subsection, "settlement" includes an agreement entered into between the manufacturer and the consumer that occurs after the dispute has been

submitted to a state-operated dispute resolution program or to a manufacturer-established program certified in this or any other state, but does not include agreements reached in informal proceedings prior to the first written or oral presentation to the state-operated or state-certified dispute resolution program by either party. "Settlement" also includes an agreement entered into between a manufacturer and a consumer that occurs after the dispute has been submitted to a dispute resolution program that is not state-operated or state-certified.

95 Acts, ch 45, §8
Section amended

322G.15 Applicability.

This chapter applies to motor vehicles originally purchased or leased in this state by consumers on or after July 1, 1991. Except for section 322G.3, subsections 1 and 2, and section 322G.6, subsection 1, this chapter applies to motor vehicles originally purchased or leased in other states, if the consumer is a resident of this state at the time the consumer's rights are asserted under this chapter. Section 322G.14, which concerns rulemaking, shall take effect May 9, 1991.

95 Acts, ch 45, §9
Section amended

CHAPTER 323**MOTOR FUEL AND SPECIAL FUEL****323.1 Definitions.**

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

1. "Dealer" means a person, other than an employee of a distributor or franchiser, who operates, maintains or conducts a place of business from which motor fuel or special fuel is sold or offered for sale at retail to the ultimate consumer, and who holds a license, issued as provided in chapter 214, for each pump and meter operated upon the retail premises.

2. "Dealer franchise" means an agreement or contract, either written or oral, between a franchiser and a dealer or between a distributor and a dealer when all of the following conditions are included:

a. A commercial relationship of definite duration or continuing indefinite duration is involved.

b. The dealer is granted the right to offer and sell motor fuel or special fuel that is imported, refined or distributed by the franchiser or by the distributor.

c. The dealer's business is substantially reliant on the franchiser or distributor for the continued supply of motor fuel or special fuel.

3. "Department" means the department of inspections and appeals.

4. "Distributor" means a person as defined in chapter 452A.

5. "Distributor franchise" means a written agreement or contract, either written or oral, between a

franchiser and a distributor when all of the following conditions are included:

a. A commercial relationship of definite duration or continuing indefinite duration is involved.

b. The distributor is granted the right to offer and sell motor fuel or special fuel that is imported, refined or distributed by the franchiser.

c. The distributor, as an independent business, constitutes a component of the franchiser's distribution system.

d. The distributor's business, or a portion of it which is related to motor fuel or special fuel purchased from the franchiser is substantially reliant on the franchiser for the continued supply of motor fuel or special fuel.

e. The distributor's business or a portion of it which is related to motor fuel or special fuel purchased from the franchiser is substantially associated with the franchiser's trademark, service mark, trade name, advertising or other commercial symbol designating the franchiser.

6. "Franchiser" means a person who is engaged in the importation, refining or distribution of motor fuel or special fuel and who has entered into a distributor franchise or a dealer franchise.

7. "Motor fuel" means motor fuel as defined in chapter 452A.

8. "Retail premises" means real estate either

owned or leased by the dealer and used primarily for the sale at retail to the ultimate consumer of motor fuel or special fuel.

9. "*Retaliatory action*" means action contrary to the purpose or intent of this chapter and may include a refusal to continue to sell or lease, a reduction in the quality or quantity of services or products customarily available for sale or lease, a violation of privacy, or an inducement of others to retaliate.

10. "*Special fuel*" means special fuel as defined in chapter 452A.

95 Acts, ch 155, §1
1995 amendment to subsection 4 effective January 1, 1996; 95 Acts, ch 155, §44
Subsection 4 amended

323.2 Discontinuing distributor franchise.

Notwithstanding the terms, provisions or conditions of any distributor franchise, a franchiser shall not terminate or refuse to renew a distributor franchise except as provided in this chapter. A franchiser shall not terminate or refuse to renew a distributor franchise unless the franchiser gives to the distributor thirty days' written notice of franchiser's intent to terminate or not renew. Notice shall be given by restricted certified mail, as defined in section 618.15. If a distributor, within thirty days after the date of delivery of the notice from the franchiser, applies to the department for a hearing under this chapter, the distributor franchise shall remain in effect pending a final order by the department. The application filed by the distributor shall state, under oath, that the

distributor has not filed a petition in bankruptcy or been declared bankrupt within six months preceding the filing of the application, that the franchiser has not withdrawn entirely from the sale for resale of motor fuel and special fuel in this state, that there are no past due sums owing by the distributor to the franchiser, and that the distributor has not consented in writing to the termination or nonrenewal of the distributor franchise.

95 Acts, ch 155, §2
1995 amendment effective January 1, 1996; 95 Acts, ch 155, §44
Section amended

323.6 Conditions barring change in distributor franchise.

Notwithstanding the terms, provisions or conditions of a distributor franchise, the following shall not constitute good cause for the termination or refusal to renew a distributor franchise:

1. The sole fact that the franchiser desires further penetration of the market.

2. The change of executive management of the distributor, unless the franchiser, having the burden of proof, proves that the change of executive management will be substantially detrimental to the distribution of the franchiser's motor fuels or special fuels in the area served by the distributor.

3. The sale or change of ownership of the distributor's business.

95 Acts, ch 155, §3
1995 amendment to subsection 3 effective January 1, 1996; 95 Acts, ch 155, §44
Subsection 3 amended

CHAPTER 327A

LIQUID TRANSPORT CARRIERS

327A.1 Definitions.

The following words and phrases, when used in this chapter, will for the purpose of this chapter, have the following meanings respectively ascribed to them:

1. "*Department*" means the state department of transportation.

2. "*Liquid transport carrier*" shall mean any person engaged in the transportation, for compensation, of liquid products in bulk upon any highway in this state.

3. "*Person*" shall mean any individual, association, partnership, firm or corporation.

4. "*Transportation for compensation*" shall include all public transportation, and transportation primarily for others, but does not include a distributor as defined under chapter 452A, even though as an incident thereto the person buys the liquids at the point where the transportation originates and sells it at a delivered price at destination. However, "*transportation for compensation*" shall include transportation for others by a distributor as defined under chapter 452A or liquid products not owned by the distributor.

5. "*Vehicle*" shall mean any self-propelled vehicle, any trailer, semitrailer, or other device used in connection therewith not operated upon fixed rails or tracks, equipped with one or more cargo tanks, or between fixed termini or over a regular route and used for the transportation of liquid products in bulk.

95 Acts, ch 155, §4
1995 amendments to subsection 4 effective January 1, 1996; 95 Acts, ch 155, §44
Subsection 4 amended

327A.15 Vehicles excepted.

Sections 327A.1 to 327A.14 shall not apply to transportation in bulk by a vehicle having a total cargo tank shell capacity of two thousand gallons or less, transportation by a distributor as defined under chapter 452A incidental to and in the regular course of business as a distributor of petroleum products, or reciprocal exchange between distributors as defined under chapter 452A of transportation pursuant to an exchange of products between distributors.

95 Acts, ch 155, §5
1995 amendments take effect January 1, 1996; 95 Acts, ch 155, §44
Section amended

CHAPTER 327B

REGISTRATION OF CARRIER AUTHORITY

327B.1 Authority secured and registered.

It is unlawful for a carrier to perform an interstate transportation service for compensation upon the highways of this state without first registering the authority obtained from the interstate commerce commission or evidence that such authority is not required with the state department of transportation.

The department shall participate in the single state insurance registration program for regulated motor carriers as provided in 49 U.S.C. § 11506 and interstate commerce commission regulations.

Registration for carriers transporting commodities exempt from interstate commerce commission regulation shall be granted without hearing upon application and payment of a twenty-five-dollar filing fee and an annual one-dollar fee per vehicle.

The state department of transportation may execute reciprocity agreements with authorized representatives of any state exempting nonresidents from payment of fees as set forth in this chapter. The state department of transportation shall adopt rules pursuant to chapter 17A for the identification of vehicles operated under reciprocity agreements.

Fees may be subject to reduction or proration pursuant to sections 326.5 and 326.32.

95 Acts, ch 118, §31
Section amended

327B.6 Insurance or bond.

Registration under section 327B.1 shall not be granted until the exempt carrier has filed with the state department of transportation evidence of insurance or surety bond issued by an insurance carrier

or bonding company authorized to do business in this state in a form prescribed by the department. The minimum limits of liability for each interstate motor carrier for hire subject to federal minimum limits of liability are those adopted under United States Code, Title 49, and prescribed in 49 C.F.R. § 387.3 and § 387.9 for motor carriers of property and in 49 C.F.R. § 387.27 and § 387.33 for motor carriers of passengers.

The insurance policy or surety bond shall bind the insurance company or bonding company to make compensation to claimants for the carrier's liability. The insurance policy or surety bond shall also provide that a person having a cause of action against the carrier may bring action directly upon the policy or bond when service cannot be obtained on the interstate carrier within this state.

Failure to keep insurance or bond in effect at all times shall cause the registration of the interstate carrier to be revoked.

95 Acts, ch 118, §32
Unnumbered paragraph 1 amended

327B.7 Reciprocity for exempt commodity base state registration system.

The department may enter into a reciprocity agreement on behalf of this state with authorized representatives of other states to become a member of an exempt commodity base state registration system for the registration, insurance verification, and fee collection for carriers hauling commodities exempt from interstate commerce commission authority.

95 Acts, ch 118, §33
NEW section

CHAPTER 331

COUNTY HOME RULE IMPLEMENTATION

Modernization of vital statistics records system effective July 1, 1997; cooperation during transition period; 95 Acts, ch 124, §25, 26
See 95 Acts, ch 124, §9-12 and 24-26 for future amendments to ch 331 relating to transfer of vital statistics duties from clerk of the district court effective July 1, 1997

331.203 Membership increased — vote.

1. The board may by resolution, or shall upon petition of the number of eligible electors of the county as specified in section 331.306, submit to the registered voters of the county at a general election a proposition to increase the number of supervisors to five.

2. If a majority of the votes cast on the proposition is in favor of the increase to five members, the board shall be increased to five members effective on the

first day in January which is not a Sunday or holiday following the next general election. The five-member board shall be elected according to the supervisor representation plan in effect in the county.

a. If plan "one" as defined in section 331.206 is in effect, two additional supervisors shall be elected at the next general election, one for a two-year term and one for a four-year term.

b. If plan "two" or plan "three" as defined in section 331.206 is in effect, the temporary county

redistricting commission shall divide the county into five equal-population districts by December 15 of the year preceding the year of the next general election and at that general election, five board members shall be elected, two for initial terms of two years and three for four-year terms. The districts shall be drawn in the manner provided under sections 331.209 and 331.210. The terms of the three incumbent supervisors shall expire on the date that the five-member board becomes effective.

c. The length of term for which a person is a candidate and the date when the term begins shall be indicated on the ballot.

95 Acts, ch 67, §53
Terminology change applied

331.204 Membership reduced — vote — new members.

1. In a county having a five-member board, the board may by resolution, or shall upon petition of the number of eligible electors of the county as specified in section 331.306, submit to the registered voters of the county at a general election a proposition to reduce the number of supervisors to three.

2. If a majority of the votes cast on the proposition is in favor of the reduction to three members, the membership of the board shall remain at five until the first day in January which is not a Sunday or holiday following the next general election, at which time the terms of the five members shall expire.

3. At the next general election following the one at which the proposition to reduce the membership of the board to three is approved, the membership of the board shall be elected according to the supervisor representation plan in effect in the county. If the supervisor representation plan includes equal-population districts, the districts shall be designated by December 15 of the year preceding the year of the next general election by the temporary county redistricting commission. The districts shall be drawn in the manner provided under sections 331.209 and 331.210. One member of the board shall be elected to a two-year term and the remaining two members shall be elected to four-year terms. The length of the term for which a person is a candidate and the date when the term begins shall be indicated on the ballot.

95 Acts, ch 67, §53
Terminology change applied

331.205 Petition and vote in certain counties — exception.

1. In a county where there is a city operating under the commission form of government with a population of more than seventy-five thousand, the petition to increase or reduce the number of members of the board must contain signatures of at least ten percent of the registered voters residing within the county and outside of the corporate limits of the city and at least ten percent of the registered voters residing within the city.

2. When the proposition to increase or reduce the membership of the board is voted upon, the regis-

tered voters of a city described in subsection 1 and the registered voters residing outside of the city shall vote on the proposition separately and a majority of the votes cast on the proposition by each of the two classes of registered voters must approve the proposition before it becomes effective.

95 Acts, ch 67, §53
Terminology change applied

331.208 Plan “one” terms of office.

If plan “one” is selected pursuant to section 331.206 or 331.207, the board shall be elected as provided in this section.

1. In the primary and general elections, the number of supervisors, or candidates for the offices, which constitutes the board in the county, shall be elected by the registered voters of the county at large without district residence requirements.

2. In counties with three county supervisors, one person shall be elected as a member of the board for an initial term of two years and two persons shall be elected as members of the board for four years.

3. In counties with five supervisors, two persons shall be elected as members of the board for initial terms of two years and three persons shall be elected as members of the board for four years.

4. The determination as to whether a term of office shall be for two or four years shall be decided by lot before the primary election, and the results of the determination indicated on the ballot in the primary and general elections.

95 Acts, ch 67, §53
Terminology change applied

331.237 Referendum — effective date.

1. If a proposed charter for county government is received not less than five working days before the filing deadline for candidates for county offices specified in section 44.4 for the next general election, the board shall direct the county commissioner of elections to submit to the registered voters of the county at the next general election the question of whether the proposed charter shall be adopted. A summary of the proposed charter or amendment shall be published in the official county newspapers and in a newspaper of general circulation in each participating city, if applicable, at least ten but not more than twenty days before the date of the election. If a majority of the votes cast on the question is in favor of the proposal, the proposal is adopted.

2. If a proposed charter for county government is adopted:

a. The adopted charter shall take effect July 1 following the general election at which it is approved unless the charter provides a later effective date. If the adopted charter calls for a change in the form of government, officers to fill elective offices shall be elected in the general election in the even-numbered year following the adoption of the charter. Those county officers holding office at the time of the adoption of the charter shall continue in office until the

general election in the even-numbered year following the adoption of the charter. If the charter provides that one or more elective offices are combined, the board of supervisors shall appoint one of the elective officers of the combined offices to serve until the general election in the even-numbered year. If the charter calls for the elimination of an elective office, that elective officer's term of office shall expire on the date the adopted charter takes effect.

b. The adoption of the alternative form of county government does not alter any right or liability of the county in effect at the time of the election at which the charter was adopted.

c. All departments and agencies shall continue to operate until replaced.

d. All ordinances or resolutions in effect remain effective until amended or repealed, unless they are irreconcilable with the adopted charter.

e. Upon the effective date of the adopted charter, the county shall adopt the alternative form by ordinance, and shall file a copy with the secretary of state, and maintain available copies for public inspection.

f. The former governing bodies shall continue to perform their duties until the new governing body is sworn into office, and shall assist the new governing body in planning the transition to the charter government.

3. If a charter is submitted to the electorate but is not adopted, another charter shall not be submitted to the electorate for two years. If a charter is adopted, it may be amended at any time. If a charter is adopted, a proposed charter for another alternative form of county government shall not be submitted to the electorate for six years.

95 Acts, ch 67, §53
Terminology change applied

331.301 General powers and limitations.

1. A county may, except as expressly limited by the Constitution, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents. This grant of home rule powers does not include the power to enact private or civil law governing civil relationships, except as incident to an exercise of an independent county power.

2. A power of a county is vested in the board, and a duty of a county shall be performed by or under the direction of the board except as otherwise provided by law.

3. The enumeration of a specific power of a county, the repeal of a grant of power, or the failure to state a specific power does not limit or restrict the general grant of home rule power conferred by the Constitution and this section. A county may exercise its general powers subject only to limitations expressly imposed by a state law.

4. An exercise of a county power is not inconsistent with a state law unless it is irreconcilable with the state law.

5. A county shall substantially comply with a procedure established by a state law for exercising a county power unless a state law provides otherwise. If a procedure is not established by state law, a county may determine its own procedure for exercising the power.

6. A county shall not set standards and requirements which are lower or less stringent than those imposed by state law, but may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise.

7. A county shall not levy a tax unless specifically authorized by a state statute.

8. A county is a body corporate for civil and political purposes and shall have a seal as provided in section 331.552, subsection 4.

9. Supervisors and other county officers may administer oaths and take affirmations as provided in chapter 63A.

10. A county may enter into leases or lease-purchase contracts for real or personal property in accordance with the following terms and procedures:

a. A county shall lease or lease-purchase property only for a term which does not exceed the economic life of the property, as determined by the board.

b. A lease or lease-purchase contract entered into by a county may contain provisions similar to those sometimes found in leases between private parties, including, but not limited to, the obligation of the lessee to pay any of the costs of operation or ownership of the leased property and the right to purchase the leased property.

c. A provision of a lease or lease-purchase contract which stipulates that a portion of the rent payments be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 is not applicable. A county enterprise is a separate entity under this subsection, whether it is governed by the board or another governing body.

d. The board must follow substantially the same authorization procedure required for the issuance of general obligation bonds issued for the same purpose to authorize a lease or a lease-purchase contract made payable from the debt service fund.

e. The board may authorize a lease or lease-purchase contract which is payable from the general fund and which would not cause the total of lease and lease-purchase payments of the county due from the general fund of the county in any future year for lease or lease-purchase contracts in force on the date of the authorization, excluding payments to exercise purchase options or to pay the expenses of operation or ownership of the property, to exceed ten percent of the last certified general fund budget amount in accordance with the following procedures:

(1) The board must follow substantially the authorization procedures of section 331.443 to autho-

rise a lease or lease-purchase contract for personal property which is payable from the general fund. The board must follow substantially the authorization procedures of section 331.443 to authorize a lease or lease-purchase contract for real property which is payable from the general fund if the principal amount of the lease-purchase contract does not exceed the following limits:

(a) Four hundred thousand dollars in a county having a population of twenty-five thousand or less.

(b) Five hundred thousand dollars in a county having a population of more than twenty-five thousand but not more than fifty thousand.

(c) Six hundred thousand dollars in a county having a population of more than fifty thousand but not more than one hundred thousand.

(d) Eight hundred thousand dollars in a county having a population of more than one hundred thousand but not more than two hundred thousand.

(e) One million dollars in a county having a population of more than two hundred thousand.

(2) The board must follow the following procedures to authorize a lease or lease-purchase contract for real property which is payable from the general fund if the principal amount of the lease or lease-purchase contract exceeds the limits set forth in subparagraph (1):

(a) The board must institute proceedings for entering into a lease or lease-purchase contract payable from the general fund by causing a notice of the meeting to discuss entering into the lease or lease-purchase contract, including a statement of the principal amount and purpose of the lease or lease-purchase and the right to petition for an election, to be published as provided in section 331.305 at least ten days prior to the discussion meeting. No sooner than thirty days following the discussion meeting shall the board hold a meeting at which it is proposed to take action to enter into the lease or lease-purchase contract.

(b) If at any time before the end of the thirty-day period after which a meeting may be held to take action to enter into the lease or lease-purchase contract, a petition is filed with the auditor in the manner provided by section 331.306, asking that the question of entering into the lease or lease-purchase contract be submitted to the registered voters of the county, the board shall either by resolution declare the proposal to enter into the lease or lease-purchase contract to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of entering into the lease or lease-purchase contract. However, for purposes of this subparagraph, the petition shall not require signatures in excess of one thousand persons. The question to be placed on the ballot shall be stated affirmatively in substantially the following manner: Shall the county of enter into a lease or lease-purchase contract in an amount of \$..... for the purpose of? Notice of the election and its conduct shall be in the manner provided in section 331.442, subsections 2 through 4.

(c) If a petition is not filed or if a petition is filed and the proposition of entering into a lease or lease-purchase contract is approved at the election, the board may proceed and enter into the lease or lease-purchase contract.

f. The governing body may authorize a lease or lease-purchase contract payable from the net revenues of a county enterprise or combined county enterprise by following the authorization procedures of section 331.464.

g. A lease or lease-purchase contract to which a county is a party or in which a county has a participatory interest is an obligation of a political subdivision of this state for the purposes of chapters 502 and 636, and is a lawful investment for banks, trust companies, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees, and any other fiduciaries responsible for the investment of funds.

h. Property that is lease-purchased by a county is exempt under section 427.1, subsection 2.

i. A contract for construction by a private party of property to be leased or lease-purchased by a county is not a contract for a public improvement under section 331.341, subsection 1. However, if a lease-purchase contract is funded in advance by means of the lessor depositing moneys to be administered by a county, with the county's obligation to make rent payments commencing with its receipt of moneys, a contract for construction of the property in question awarded by the county is a public improvement and is subject to section 331.341, subsection 1.

11. A county may enter into insurance agreements obligating the county to make payments beyond its current budget year to procure or provide for a policy of insurance, a self-insurance program, or a local government risk pool to protect the county against tort liability, loss of property, or any other risk associated with the operation of the county. Such a self-insurance program or local government risk pool is not insurance and is not subject to regulation under chapters 505 through 523C. However, those self-insurance plans regulated pursuant to section 509A.14 shall remain subject to the requirements of section 509A.14 and rules adopted pursuant to that section.

12. The board of supervisors may credit funds to a reserve for the purposes authorized by subsection 11 of this section; section 331.424, subsection 1, paragraph "f"; and section 331.441, subsection 2, paragraph "b". Moneys credited to the reserve, and interest earned on such moneys, shall remain in the reserve until expended for purposes authorized by subsection 11 of this section; section 331.424, subsection 1, paragraph "f"; or section 331.441, subsection 2, paragraph "b".

13. The board of supervisors may waive a tax penalty, interest, or costs related to the collection of a tax if the board finds that a clerical error resulted in the penalty, interest, or cost. This subsection does not apply to bonded special assessments without the approval of the affected taxing jurisdiction.

14. The county may establish a department of public works. The department shall be administered by the county engineer or other person appointed by the board of supervisors. In addition to other duties assigned by the board, the department shall provide technical assistance to political subdivisions in the county including special districts relating to their physical infrastructure and may provide managerial and administrative services for special districts and combined special districts.

95 Acts, ch 67, §53; 95 Acts ch 206, §8
1995 amendment to subsection 12 is effective January 1, 1996, and applies to taxes payable in the fiscal year beginning July 1, 1996, and subsequent fiscal years; 95 Acts, ch 206, §12
Terminology change applied
Subsection 12 amended

331.306 Petitions of eligible electors.

If a petition of the voters is authorized by this chapter, the petition is valid if signed by eligible electors of the county equal in number to at least ten percent of the votes cast in the county for the office of president of the United States or governor at the preceding general election, unless otherwise provided by state law. The petition shall include the signatures of the petitioners, a statement of their place of residence, and the date on which they signed the petition.

Petitions authorized by this chapter shall be filed with the board of supervisors not later than eighty-two days before the date of the general election if the question is to be voted upon at the general election. If the petition is found to be valid, the board of supervisors shall, not later than sixty-nine days before the general election, notify the county commissioner of elections to submit the question to the registered voters at the general election.

A petition shall be examined before it is accepted for filing. If it appears valid on its face it shall be accepted for filing. If it lacks the required number of signatures it shall be returned to the petitioners.

Petitions which have been accepted for filing are valid unless written objections are filed. Objections must be filed with the county auditor within five working days after the petition was filed. The objection process in section 44.7 shall be followed for objections filed pursuant to this section.

95 Acts, ch 67, §53
Terminology change applied

331.341 Contracts.

1. When the estimated cost of a public improvement, other than improvements which may be paid for from the secondary road fund, exceeds the amount specified in section 309.40, the board shall follow the contract letting procedures provided for cities in sections 384.95 to 384.103. However, in following those sections the board shall substitute the word "county" for the word "city", section 331.305 for section 362.3, shall consider "governing body" to mean the board, and shall exclude references to a city utility, utility board of trustees, or public utilities. As used in this section, "public improvement" means the same as defined in section 384.95 as modified by this subsection.

2. The board shall give preference to Iowa products and labor in accordance with chapter 73 and shall comply with bid and contract requirements in section 73.2.

3. Contracts for improvements which may be paid for from the secondary road fund shall be awarded in accordance with sections 309.40 to 309.43, 310.14, 314.1, 314.2, and other applicable state law.

4. If the contract price for a public improvement is five thousand dollars or more, the board shall require a contractor's bond in accordance with chapter 573.

5. In exercising its power to contract for public improvements, the board may contract for the application of contract termination procedures in accordance with chapter 573A.

95 Acts, ch 71, §2
Subsection 2 amended

331.402 Powers relating to finances — limitations.

1. The payment of county obligations by anticipatory warrants is subject to chapters 74 and 74A and other applicable state law. Anticipatory warrants drawn on the secondary road fund are also subject to sections 309.46 to 309.55.

2. The board may:

a. Require a person who is not a part of county government but is receiving county funds to submit to audit by auditors chosen by the county. The person shall make available all pertinent records needed for the audit.

b. Enter into an agreement with the state department of human services for assistance in accordance with section 249A.12.

c. Levy within a township at a rate not to exceed the rate permitted under sections 359.30 and 359.33 for the care and maintenance of cemeteries, if the township officials fail to levy the tax as needed.

d. Authorize the county auditor to issue warrants for certain purposes as provided in section 331.506, subsection 3.

e. Impose a hotel and motel tax in accordance with chapter 422A.

f. Order the suspension of property taxes or cancel and remit the taxes of certain persons as provided in sections 427.8 and 427.10.

g. Provide for a partial exemption from property taxation in accordance with chapter 427B.

h. Contract with certified public accountants to conduct the annual audit of the financial accounts and transactions of the county as provided in section 11.6.

3. A county may enter into loan agreements to borrow money for any public purpose in accordance with the following terms and procedures:

a. A loan agreement entered into by a county may contain provisions similar to those sometimes found in loan agreements between private parties, including, but not limited to, the issuance of notes to evidence its obligations.

b. A provision of a loan agreement which stipulates that a portion of the payments be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 is not applicable. A county enterprise is a separate entity under this subsection, whether it is governed by the board or another governing body.

c. The board shall follow substantially the same authorization procedure required for the issuance of general obligation bonds issued for the same purpose to authorize a loan agreement made payable from the debt service fund.

d. The board may authorize a loan agreement which is payable from the general fund and which would not cause the total of scheduled annual payments of principal or interest or both principal and interest of the county due from the general fund of the county in any future year with respect to all loan agreements in force on the date of the authorization to exceed ten percent of the last certified general fund budget amount in accordance with the following procedures:

(1) The board shall follow substantially the authorization procedures of section 331.443 to authorize a loan agreement for personal property which is payable from the general fund. The board must follow substantially the authorization procedures of section 331.443 to authorize a loan agreement for real property which is payable from the general fund if the principal amount of the loan agreement does not exceed the following limits:

(a) Four hundred thousand dollars in a county having a population of twenty-five thousand or less.

(b) Five hundred thousand dollars in a county having a population of more than twenty-five thousand but not more than fifty thousand.

(c) Six hundred thousand dollars in a county having a population of more than fifty thousand but not more than one hundred thousand.

(d) Eight hundred thousand dollars in a county having a population of more than one hundred thousand but not more than two hundred thousand.

(e) One million dollars in a county having a population of more than two hundred thousand.

(2) The board must follow the following procedures to authorize a loan agreement for real property which is payable from the general fund if the principal amount of the loan agreement exceeds the limits set forth in subparagraph (1):

(a) The board must institute proceedings for entering into a loan agreement payable from the general fund by causing a notice of the meeting to discuss entering into the loan agreement, including a statement of the principal amount and purpose of the loan agreement and the right to petition for an election, to be published as provided in section 331.305 at least ten days prior to the discussion meeting. No sooner than thirty days following the discussion meeting shall the board hold a meeting at which it is proposed to take action to enter into the loan agreement.

(b) If at any time before the end of the thirty-day period after which a meeting may be held to take

action to enter into the loan agreement, a petition is filed with the auditor in the manner provided by section 331.306 asking that the question of entering into the loan agreement be submitted to the registered voters of the county, the board shall either by resolution declare the proposal to enter into the loan agreement to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of entering into the loan agreement. However, for purposes of this subparagraph, the petition shall not require signatures in excess of one thousand persons. The question to be placed on the ballot shall be stated affirmatively in substantially the following manner: Shall the county of enter into a loan agreement in amount of \$..... for the purpose of? Notice of the election and its conduct shall be in the manner provided in section 331.442, subsections 2 through 4.

(c) If a petition is not filed or if a petition is filed and the proposition of entering into the loan agreement is approved at an election, the board may proceed and enter into the loan agreement.

e. The governing body may authorize a loan agreement payable from the net revenues of a county enterprise or combined county enterprise by following the authorization procedures of section 331.464.

f. A loan agreement to which a county is a party or in which a county has a participatory interest is an obligation of a political subdivision of this state for the purpose of chapters 502 and 636, and is a lawful investment for banks, trust companies, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees, and any other fiduciaries responsible for the investment of funds.

95 Acts, ch 67, §53
Terminology change applied

331.424 Supplemental levies.

To the extent that the basic levies are insufficient to meet the county's needs for the following services, the board may certify supplemental levies as follows:

1. For general county services, an amount sufficient to pay the charges for the following:

a. To the extent that the county is obligated by statute to pay the charges for:

(1) Care and treatment of persons at the alcoholic treatment center at Oakdale. However, the county may require that an admission to the center shall be reported to the board by the center within five days as a condition of the payment of county funds for that admission.

(2) Care of children admitted or committed to the Iowa juvenile home at Toledo.

(3) Clothing, transportation, medical, or other services provided persons attending the Iowa braille and sight saving school, the Iowa school for the deaf, or the state hospital-school for severely handicapped children at Iowa City, for which the county becomes obligated to pay pursuant to sections 263.12, 269.2, and 270.4 through 270.7.

b. Foster care and related services provided under court order to a child who is under the jurisdiction of the juvenile court, including court-ordered costs for a guardian ad litem under section 232.71.

c. Elections, and voter registration pursuant to chapter 48A.

d. Employee benefits under chapters 96, 97B, and 97C, which are associated with salaries for general county services.

e. Joint county and city building authorities established under section 346.27, as provided in subsection 22 of that section.

f. Tort liability insurance, property insurance, and any other insurance that may be necessary in the operation of the county, costs of a self-insurance program, costs of a local government risk pool, and amounts payable under any insurance agreements to provide or procure such insurance, self-insurance program, or local government risk pool.

g. The maintenance and operation of the courts, including but not limited to the salary and expenses of the clerk of the district court and other employees of the clerk's office, and bailiffs, court costs if the prosecution fails or if the costs cannot be collected from the person liable, costs and expenses of prosecution under section 189A.17, salaries and expenses of juvenile court officers under chapter 602, court-ordered costs in domestic abuse cases under section 236.5, the county's expense for confinement of prisoners under chapter 356A, temporary assistance to the county attorney, county contributions to a retirement system for bailiffs, reimbursement for judicial magistrates under section 602.6501, claims filed under section 622.93, interpreters' fees under section 622B.7, uniform citation and complaint supplies under section 805.6, and costs of prosecution under section 815.13.

h. Court-ordered costs of conciliation procedures under section 598.16.

i. Establishment and maintenance of a joint county indigent defense fund pursuant to an agreement under section 28E.19.

j. The maintenance and operation of a local emergency management agency established pursuant to chapter 29C.

The board may require a public or private facility, as a condition of receiving payment from county funds for services it has provided, to furnish the board with a statement of the income, assets, and legal residence including township and county of each person who has received services from that facility for which payment has been made from county funds under paragraphs "a" and "b". However, the facility shall not disclose to anyone the name or street or route address of a person receiving services for which commitment is not required, without first obtaining that person's written permission.

Parents or other persons may voluntarily reimburse the county or state for the reasonable cost of caring for a patient or an inmate in a county or state facility.

2. For rural county services, an amount sufficient to pay the charges for the following:

a. Employee benefits under chapters 96, 97B, and 97C, which are associated with salaries for rural county services.

b. An aviation authority under chapter 330A, to the extent that the county contributes to the authority under section 330A.15.

95 Acts, ch 206, §9

1995 amendment to subsection 1 is effective January 1, 1996, and applies to taxes payable in the fiscal year beginning July 1, 1996, and subsequent fiscal years; 95 Acts, ch 206, §12

Subsection 1 amended

331.424A County mental health, mental retardation, and developmental disabilities services fund.

1. For the purposes of this chapter, unless the context otherwise requires, "services fund" means the county mental health, mental retardation, and developmental disabilities services fund created in subsection 2. The county finance committee created in section 333A.2 shall consult with the state-county management committee in adopting rules and prescribing forms for administering the services fund.

2. For the fiscal year beginning July 1, 1996, and succeeding fiscal years, county revenues from taxes and other sources designated for mental health, mental retardation, and developmental disabilities services shall be credited to the mental health, mental retardation, and developmental disabilities services fund of the county. The board shall make appropriations from the fund for payment of services provided under the county management plan approved pursuant to section 331.439.

3. For the fiscal year beginning July 1, 1996, and succeeding fiscal years, receipts from the state or federal government for such services shall be credited to the services fund, including moneys allotted to the county from the state payment made pursuant to section 331.439 and moneys allotted to the county for property tax relief pursuant to section 426B.1.

4. For the fiscal year beginning July 1, 1996, and for each subsequent fiscal year, the county shall certify a levy for payment of services. Unless otherwise provided by state law, for each fiscal year, county revenues from taxes imposed by the county credited to the services fund shall not exceed an amount equal to the amount of base year expenditures for services in the fiscal year beginning July 1, 1993, and ending June 30, 1994, as defined in section 331.438, less the amount of property tax relief to be received pursuant to section 426B.2, subsections 1 and 3, in the fiscal year for which the budget is certified. The county auditor and the board of supervisors shall reduce the amount of the levy certified for the services fund by the amount of property tax relief to be received.

5. Appropriations specifically authorized to be made from the mental health, mental retardation, and developmental disabilities services fund shall not be made from any other fund of the county.

95 Acts, ch 206, §10

Section is effective January 1, 1996, and applies to taxes payable in the fiscal year beginning July 1, 1996, and subsequent fiscal years; 95 Acts, ch 206, §12

NEW section

331.427 General fund.

1. Except as otherwise provided by state law, county revenues from taxes and other sources for general county services shall be credited to the general fund of the county, including revenues received under sections 101A.3, 101A.7, 123.36, 123.143, 142B.6, 176A.8, 321.105, 321.152, 321G.7, 331.554, subsection 6, 341A.20, 364.3, 368.21, 422.65, 422A.2, 428A.8, 430A.3, 433.15, 434.19, 445.57, 453A.35, 458A.21, 483A.12, 533.24, 556B.1, 567.10, 583.6, 602.8108, 904.908, and 906.17, and chapter 405A, and the following:

- a. License fees for business establishments.
 - b. Moneys remitted by the clerk of the district court and received from a magistrate or district associate judge for fines and forfeited bail imposed pursuant to a violation of a county ordinance.
 - c. Other amounts in accordance with state law.
2. The board may make appropriations from the general fund for general county services, including but not limited to the following:
- a. Expenses of a joint emergency management commission under chapter 29C.
 - b. Development, operation, and maintenance of memorial buildings or monuments under chapter 37.
 - c. Purchase of voting machines under chapter 52.
 - d. Expenses incurred by the county conservation board established under chapter 350, in carrying out its powers and duties.
 - e. Local health services. The county auditor shall keep a complete record of appropriations for local health services and shall issue warrants on them only on requisition of the local or district health board.
 - f. Expenses relating to county fairs, as provided in chapter 174.
 - g. Maintenance of a juvenile detention home under chapter 232.
 - h. Relief of veterans under chapter 35B.
 - i. Care and support of the poor under chapter 252.
 - j. Operation, maintenance, and management of a health center under chapter 346A.
 - k. For the use of a nonprofit historical society organized under chapter 504 or 504A, a city-owned historical project, or both.
 - l. Services listed in section 331.424, subsection 1 and section 331.554.
 - m. Closure and postclosure care of a sanitary disposal project under section 455B.302.

3. Appropriations specifically authorized to be made from the general fund shall not be made from the rural services fund, but may be made from other sources.

95 Acts, ch 216, §37
Subsection 2, NEW paragraph m

331.438 County mental health, mental retardation, and developmental disabilities services expenditures — management committee.

1. For the purposes of this section and section 331.439, unless the context otherwise requires:

- a. "Base year expenditures" means the actual ex-

penditures made by a county for qualified mental health, mental retardation, and developmental disabilities services provided in the fiscal year beginning July 1, 1993, and ending June 30, 1994.

b. "State payment" means the payment made by the state to a county determined to be eligible for the payment in accordance with section 331.439.

2. Except as modified based upon the actual amount of the appropriation for purposes of state payment under section 331.439, the amount of the state payment for a fiscal year shall be calculated by applying the inflation factor adjustment established in accordance with section 331.439, subsection 3,* for that fiscal year to the amount of county expenditures for qualified services in the previous fiscal year. A state payment is the state funding a county receives pursuant to section 426B.2, subsection 2. Any state funding received by a county for property tax relief in accordance with section 426B.2, subsections 1 and 3, is not a state payment and shall not be included in the state payment calculation made pursuant to this subsection.

3. The state payment shall not include any expenditures for services that were provided but not reported in the county's base year expenditures or for any expenditures which were not included in the county management plan submitted by the county in accordance with section 331.439. A county's eligibility for state payment is subject to the provisions of section 331.439.

4. a. A state-county management committee is created in the department of human services to make recommendations for joint state and county planning, implementing, and funding of mental health, mental retardation, and developmental disabilities services, including but not limited to developing and implementing fiscal and accountability controls, establishing management plans, and ensuring that eligible persons have access to appropriate and cost-effective services.

b. The management committee shall consist of not more than eleven voting members representing the state and counties as follows:

(1) An equal number of not more than nine members shall be appointed by the director of human services and the Iowa state association of counties and one additional member shall be jointly appointed by both entities. Members appointed by the Iowa state association of counties shall be selected from a pool nominated by the county supervisor affiliate of the association with four members from the affiliate. The affiliate shall select the nominees through a secret ballot process.

(2) The committee shall include one member nominated by service providers and one member nominated by service advocates and consumers, with both members appointed by the governor.

(3) In addition, the committee shall include four members of the general assembly with one each designated by the majority leader and minority leader of the senate and the speaker and minority leader of the house of representatives. A legislative

member serves in an ex officio, nonvoting capacity and is eligible for per diem and expenses as provided in section 2.10.

(4) A member who is not a legislator shall have expenses and other costs paid by the state or the county entity that the member represents. The committee shall establish terms for its members, elect officers, adopt operating procedures, and meet as deemed necessary by the committee.

c. The management committee shall do all of the following:

(1) Identify characteristics of the service system, including amounts expended, equity of funding among counties, funding sources, provider types, service availability, and equity of service availability among counties and among persons served.

(2) Assess the accuracy and uniformity of record keeping and reporting in the service system.

(3) Identify for each county the factors associated with inflationary growth of the service system.

(4) Identify opportunities for containing service system growth.

(5) Make recommendations for revising service system administrative rules.

(6) Consider provisions for counties to implement a single point of accountability to plan, budget, and monitor county expenditures for the service system. The provisions shall provide options for counties to implement the single point in collaboration with other counties.

(7) Develop criteria for annual county mental health, mental retardation, and developmental disabilities plans.

(8) Make recommendations to the council on human services for administrative rules identifying qualified mental health, mental retardation, and developmental disabilities service expenditures for purposes of state payment pursuant to subsection 1.

(9) Make recommendations to the council on human services for administrative rules for the county single entry point and clinical assessment processes required under section 331.440 and other rules necessary for the implementation of county management plans and expenditure reports required for state payment pursuant to section 331.439.

(10) Make recommendations to improve the programs and cost effectiveness of state and county contracting processes and procedures, including strategies for negotiations relating to managed care.

(11) Provide input when appropriate, to the director of human services in any decision involving administrative rules which were initially recommended by the management committee.

(12) Identify the fiscal impact of existing or proposed legislation and administrative rules on state and county expenditures.

(13) No later than January 1, annually, submit a report to the governor, the general assembly, and the department of human services concerning the management committee's activities and findings.

(14) On or before December 1, 1994, submit to the governor and general assembly a methodology for the

state and counties to move toward the goal of an equal partnership in the funding of mental health, mental retardation, and developmental disabilities services. The committee consideration of methodology options shall include an expenditure per consumer basis.

95 Acts, ch 120, §5; 95 Acts, ch 206, §14

*Inflation factor adjustment provisions contained in 95 Acts, ch 206, §15, were item vetoed

Applicability of 1995 amendments to subsection 4, paragraph b; 95 Acts, ch 120, §7

Appropriations pursuant to §426B.1 to fund obligations under this section and §331.439; continued effectiveness of county property tax limitations; 95 Acts, ch 206, §22

Review, recommendations, and reports by management committee; 95 Acts, ch 120, §6; 95 Acts, ch 206, §23

Subsection 1, paragraph b amended and divided into subsection 2, and former subsections 2 and 3 renumbered as 3 and 4

Subsection 4, paragraph b amended

331.439 Eligibility for state payment.

1. The state payment to eligible counties under this section shall be made as provided in sections 331.438 and 426B.2. A county is eligible for the state payment, as defined in section 331.438, for the fiscal year beginning July 1, 1996, and for subsequent fiscal years if the director of human services, in consultation with the state-county management committee, determines for a specific fiscal year that all of the following conditions are met:

a. The county accurately reported by October 15 the county's expenditures for mental health, mental retardation, and developmental disabilities services for the previous fiscal year on forms prescribed by the department of human services.

b. The county developed and implemented a county management plan for the county's mental health, mental retardation, and developmental disabilities services in accordance with the provisions of this paragraph. The plan shall comply with the administrative rules adopted for this purpose by the council on human services and is subject to the approval of the director of human services in consultation with the state-county management committee created in section 331.438. The plan shall include a description of the county's service management provision for mental health, mental retardation, and developmental disabilities services. For mental retardation and developmental disabilities service management, the plan shall describe the county's development and implementation of a managed system of cost-effective individualized services and shall comply with the provisions of paragraph "d". The goal of this part of the plan shall be to assist the individuals served to be as independent, productive, and integrated into the community as possible. The service management provisions for mental health shall comply with the provisions of paragraph "c".

c. (1) For mental health service management, the county may either directly implement a system of service management and contract with service providers, or contract with a private entity to manage the system, provided all requirements of this lettered paragraph are met by the private entity. The mental health service management shall incorporate a

single entry point and clinical assessment process developed in accordance with the provisions of section 331.440. The county shall submit this part of the plan to the department of human services for approval by April 1 for the succeeding year. Initially, this part of the plan shall be submitted to the department by April 1, 1996, and the county shall implement the approved plan by July 1, 1996.

(2) The basis for determining whether a managed care system for mental health proposed by a county is comparable to a mental health managed care contractor approved by the department of human services shall include but is not limited to all of the following elements which shall be specified in administrative rules adopted by the council on human services in consultation with the state-county management committee:

- (a) The enrollment and eligibility process.
- (b) The scope of services included.
- (c) The method of plan administration.
- (d) The process for managing utilization and access to services and other assistance.
- (e) The quality assurance process.
- (f) The risk management provisions and fiscal viability of the provisions, if the county contracts with a private managed care entity.

d. For mental retardation and developmental disabilities services management, the county must either develop and implement a managed system of care which addresses a full array of appropriate services and cost-effective delivery of services or contract with a state-approved managed care contractor or contractors. Any system or contract implemented under this paragraph shall incorporate a single entry point and clinical assessment process developed in accordance with the provisions of section 331.440. The elements of the managed system of care and the state-approved managed care contract or contracts shall be specified in rules developed by the department of human services in consultation with the state-county management committee and adopted by the council on human services. Initially, this part of the plan shall be submitted to the department for approval on or before October 1, 1996, and shall be implemented on or before January 1, 1997. In fiscal years succeeding the fiscal year of initial implementation, this part of the plan shall be submitted to the department of human services for approval by April 1 for the succeeding fiscal year.

e. Changes to the approved plan are submitted at least sixty days prior to the proposed change and are not to be implemented prior to the director of human services' approval.

2. The county management plan shall address the county's criteria for serving persons with chronic mental illness, including any rationale used for decision making regarding this population.

3. For the fiscal year beginning July 1, 1996, and succeeding fiscal years, the county's mental health, mental retardation, and developmental disabilities service expenditures for a fiscal year are limited to a fixed budget amount. The fixed budget amount shall

be the amount identified in the county's management plan and budget for the fiscal year.

4. A county may provide assistance to service populations with disabilities to which the county has historically provided assistance but who are not included in the service management provisions required under subsection 1, subject to the availability of funding.

5. A county shall implement the county's management plan in a manner so as to provide adequate funding for the entire fiscal year by budgeting for ninety-nine percent of the funding anticipated to be available for the plan. A county may expend all of the funding anticipated to be available for the plan.

6. The director's approval of a county's mental health, mental retardation, and developmental disabilities services management plan shall not be construed to constitute certification of the county's budget.

95 Acts, ch 206, §15

Appropriations pursuant to §426B.1 to fund obligations under §331.438 and this section; continued effectiveness of county property tax limitations; 95 Acts, ch 206, §22

Section stricken and rewritten
Partial item veto applied

331.440 Mental health, mental retardation, and developmental disabilities services — single entry point process.

1. a. For the purposes of this section, unless the context otherwise requires, "single entry point process" means a single entry point process established by a county or consortium of counties for the delivery of mental health, mental retardation, and developmental disabilities services which are paid for in whole or in part by county funds. The single entry point process may include but is not limited to reviewing a person's eligibility for services, determining the appropriateness of the type, level, and duration of services, and performing periodic review of the person's continuing eligibility and need for services. Any recommendations developed concerning a person's plan of services shall be consistent with the person's unique strengths, circumstances, priorities, concerns, abilities, and capabilities. For those services funded under the medical assistance program, the single entry point process shall be used to assure that the person is aware of the appropriate service options available to the person.

b. The single entry point process may include a clinical assessment process to identify a person's service needs and to make recommendations regarding the person's plan for services. The clinical assessment process shall utilize qualified mental health professionals and qualified mental retardation professionals.

c. The single entry point and clinical assessment process shall include provision for the county's participation in a management information system developed in accordance with rules adopted pursuant to subsection 3.

2. The department of human services shall seek federal approval as necessary for the single entry

point and clinical assessment processes to be eligible for federal financial participation under medical assistance. A county may implement the single entry point process as part of a consortium of counties and may implement the process beginning with the fiscal year ending June 30, 1995.

3. The council on human services shall consider the recommendations of the state-county management committee established in section 331.438 in adopting rules outlining standards and requirements for implementation of the single entry point and clinical assessment processes on the date required by subsection 2. The rules shall permit counties options in implementing the process based upon a county's consumer population and available service delivery system.

95 Acts, ch 206, §16
Subsection 1, NEW paragraph c

331.441 Definitions.

1. As used in this part, the use of the conjunctive "and" includes the disjunctive "or" and the use of the disjunctive "or" includes the conjunctive "and," unless the context clearly indicates otherwise.

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

a. "General obligation bond" means a negotiable bond issued by a county and payable from the levy of ad valorem taxes on all taxable property within the county through its debt service fund which is required to be established by section 331.430.

b. "Essential county purpose" means any of the following:

(1) Voting machines or an electronic voting system.

(2) Bridges on highways or parts of highways which are located along the corporate limits of cities and are partly within and partly without the limits and are in whole or in part secondary roads.

(3) Sanitary disposal projects as defined in section 455B.301.

(4) Works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner, for the collection and disposal of solid waste, and for the collection and disposal of surface waters and streams, including the planning, acquisition, leasing, construction, reconstruction, extension, remodeling, improvement, repair, equipping, maintenance, and operation of the works and facilities.

(5) Public buildings, including the site or grounds of, and the erection, equipment, remodeling, or reconstruction of, and additions or extensions to the buildings, and including the provision and maintenance of juvenile detention or shelter care facilities, when the cost does not exceed the following limits:

(a) Four hundred thousand dollars in a county having a population of twenty-five thousand or less.

(b) Five hundred thousand dollars in a county having a population of more than twenty-five thousand but not more than fifty thousand.

(c) Six hundred thousand dollars in a county hav-

ing a population of more than fifty thousand but not more than one hundred thousand.

(d) Eight hundred thousand dollars in a county having a population of more than one hundred thousand but not more than two hundred thousand.

(e) One million dollars in a county having a population of more than two hundred thousand.

(6) Funding or refunding outstanding indebtedness if the outstanding indebtedness exceeds five thousand dollars on the first day of January, April, June or September in any year. However, a county shall not levy taxes to repay refunding bonds for bridges on property within cities.

(7) Enlargement and improvement of a county hospital acquired and operated under chapter 347A, subject to a maximum of two percent of the assessed value of the taxable property in the county. However, notice of the proposed bond issue shall be published once each week for two consecutive weeks and if, within twenty days following the date of the first publication, a petition requesting an election on the proposal and signed by qualified voters of the county equal to at least twenty percent of the votes cast at the preceding election for governor is filed with the county auditor, the proposal is subject to the election requirements in section 331.442, subsections 2, 3 and 4 for general county purpose bonds.

(8) The provision of insurance, or funding a self-insurance program or local government risk pool, including but not limited to the investigation and defense of claims, the payment of claims, and the administration and management of such self-insurance program or local government risk pool.

(9) The acquisition, restoration, or demolition of abandoned, dilapidated, or dangerous buildings, structures or properties or the abatement of a nuisance.

(10) The establishment or funding of programs to provide for or assist in providing for the acquisition, restoration, or demolition of housing, or for other purposes as may be authorized under chapter 403A.

(11) The acquiring, developing, and improving of a geographic computer data base system suitable for automated mapping and facilities management.

(12) Funding the acquisition, construction, reconstruction, improvement, repair, or equipping of waterworks, water mains and extensions, ponds, reservoirs, capacity, wells, dams, pumping installations, real and personal property, or other facilities available or used for the storage, transportation, or utilization of water.

(a) The county board of supervisors may on its own motion or upon a written petition of a water supplier established under chapter 357A or 504A, direct the county auditor to establish a special service area tax district for the purpose of issuing general obligation bonds. The special service area tax district shall include only unincorporated portions of the county and shall be drawn according to engineering recommendations provided by the water supplier or the county engineer and, in addition, shall be drawn in order that an election provided for in subpara-

graph subdivision (b) can be administered. The county's debt service tax levy for the county general obligation bonds issued for the purposes set out in this subparagraph shall be levied only against taxable property within the county which is included within the boundaries of the special service area tax district. An owner of property not included within the boundaries of the special service area tax district may petition the board of supervisors to be included in the special service area tax district subsequent to its establishment.

(b) General obligation bonds for the purposes described in this subparagraph are subject to an election held in the manner provided in section 331.442, subsections 1 through 4, if not later than fifteen days following the action by the county board of supervisors, eligible voters file a petition with the county commissioner of elections asking that the question of issuing the bonds be submitted to the registered voters of the special service area tax district. The petition must be signed by at least five percent of the registered voters residing in the special service area tax district. If the petition is duly filed within the fifteen days, the board of supervisors shall either adopt a resolution declaring that the proposal to issue the bonds is abandoned, or direct the county commissioner of elections to call a special election within a special service area tax district upon the question of issuing the bonds.

(13) The acquisition, pursuant to a chapter 28E agreement, of a city convention center or veterans memorial auditorium, including the renovation, remodeling, reconstruction, expansion, improvement, or equipping of such a center or auditorium, provided that debt service funds shall not be derived from the division of taxes under section 403.19.

(14) The aiding of the planning, undertaking, and carrying out of urban renewal projects under the authority of chapter 403 and for the purposes set out in section 403.12. However, bonds issued for this purpose are subject to the right of petition for an election as provided in section 331.442, subsection 5, without limitation on the amount of the bond issue or the population of the county, and the board shall include notice of the right of petition in the notice of proposed action required under section 331.443, subsection 2.

c. "General county purpose" means any of the following:

(1) A memorial building or monument to commemorate the service rendered by soldiers, sailors, and marines of the United States, including the acquisition of ground and the purchase, erection, construction, reconstruction, and equipment of the building or monument, to be managed by a commission as provided in chapter 37.

(2) Acquisition and development of land for a public museum, park, parkway, preserve, playground, or other recreation or conservation purpose to be managed by the county conservation board. The board may submit a proposition under this subparagraph only upon receipt of a petition from the county

conservation board asking that bonds be issued for a specified amount.

(3) The building and maintenance of a bridge over state boundary line streams. The board shall submit a proposition under this subparagraph to an election upon receipt of a petition which is valid under section 331.306.

(4) Contributions of money to the state department of transportation to help finance the construction of toll bridges across navigable rivers constituting boundaries between the county and an adjoining state.

(5) An airport, including establishment, acquisition, equipment, improvement, or enlargement of the airport.

(6) A joint city-county building, established by contract between the county and its county seat city, including purchase, acquisition, ownership, and equipment of the county portion of the building.

(7) A county health center as defined in section 346A.1, including additions and facilities for the center and including the acquisition, reconstruction, completion, equipment, improvement, repair, and remodeling of the center, additions, or facilities. Bonds for the purpose specified in this subparagraph are exempt from taxation by the state and the interest on the bonds is exempt from state income taxes.

(8) A county public hospital, including procuring a site and the erection, equipment, and maintenance of the hospital, and additions to the hospital, subject to the levy limits in section 347.7.

(9) Public buildings, including the site or grounds of, the erection, equipment, remodeling, or reconstruction of, and additions or extensions to the buildings, and including the provision and maintenance of juvenile detention or shelter care facilities, when the cost exceeds the limits stated in subsection 2, paragraph "b", subparagraph (5).

(10) The undertaking of any project jointly or in cooperation with any other governmental body which, if undertaken by the county alone, would be for a general county purpose, including the joint purchase, acquisition, construction, ownership, or control of any real or personal property.

(11) Any other purpose which is necessary for the operation of the county or the health and welfare of its citizens.

3. The "cost" of a project for an essential county purpose or general county purpose includes construction contracts and the cost of engineering, architectural, technical, and legal services, preliminary reports, property valuations, estimates, plans, specifications, notices, acquisition of real and personal property, consequential damages or costs, easements, rights-of-way, supervision, inspection, testing, publications, printing and sale of bonds, interest during the period or estimated period of construction and for twelve months thereafter or for twelve months after the acquisition date, and provisions for contingencies.

95 Acts, ch 67, §53
Terminology change applied

331.442 General county purpose bonds.

1. A county which proposes to carry out any general county purpose within or without its boundaries, and to contract indebtedness and issue general obligation bonds to provide funds to pay all or any part of the costs of a project, shall do so in accordance with this part.

2. Before the board may institute proceedings for the issuance of bonds for a general county purpose, it shall call a county special election to vote upon the question of issuing the bonds. At the election the proposition shall be submitted in the following form:

Shall the county of, state of Iowa, be authorized to (state purpose of project) at a total cost not exceeding \$..... and issue its general obligation bonds in an amount not exceeding \$..... for that purpose?

3. Notice of the election shall be given by publication as specified in section 331.305. At the election the ballot used for the submission of the proposition shall be in substantially the form for submitting special questions at general elections.

4. The proposition of issuing bonds for a general county purpose is not carried or adopted unless the vote in favor of the proposition is equal to at least sixty percent of the total vote cast for and against the proposition at the election. If the proposition of issuing the general county purpose bonds is approved by the voters, the board may proceed with the issuance of the bonds.

5. a. Notwithstanding subsection 2, a board, in lieu of calling an election, may institute proceedings for the issuance of bonds for a general county purpose by causing a notice of the proposal to issue the bonds, including a statement of the amount and purpose of the bonds, and the right to petition for an election, to be published as provided in section 331.305 at least ten days prior to the meeting at which it is proposed to take action for the issuance of the bonds subject to the following limitations:

(1) In counties having a population of twenty thousand or less, in an amount of not more than fifty thousand dollars.

(2) In counties having a population of over twenty thousand and not over fifty thousand, in an amount of not more than one hundred thousand dollars.

(3) In counties having a population of over fifty thousand, in an amount of not more than one hundred fifty thousand dollars.

b. If at any time before the date fixed for taking action for the issuance of the bonds, a petition is filed with the auditor in the manner provided by section 331.306 asking that the question of issuing the bonds be submitted to the registered voters of the county, the board shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds. Notice of the election and its conduct shall be in the manner provided in subsections 2, 3 and 4.

c. If no petition is filed, or if a petition is filed and the proposition of issuing the bonds is approved at an election, the board may proceed with the authorization and issuance of the bonds.

95 Acts, ch 67, §53
Terminology change applied

331.447 Taxes to pay bonds.

1. Taxes for the payment of general obligation bonds shall be levied in accordance with chapter 76, and the bonds are payable from the levy of unlimited ad valorem taxes on all the taxable property within the county through its debt service fund required by section 331.430 except that:

a. The amount estimated and certified to apply on principal and interest for any one year shall not exceed the maximum rate of tax, if any, provided by this division for the purpose for which the bonds were issued. If general obligation bonds are issued for different categories, as provided in section 331.445, the maximum rate of levies, if any, for each purpose shall apply separately to that portion of the bond issue for that category and the resolution authorizing the bond issue shall clearly set forth the annual debt service requirements with respect to each purpose in sufficient detail to indicate compliance with the rate of tax levy, if any.

b. The amount estimated and certified to apply on principal and interest for any one year may only exceed the statutory rate of levy limit, if any, by the amount that the registered voters of the county have approved at a special election, which may be held at the same time as the general election and may be included in the proposition authorizing the issuance of bonds, if an election on the proposition is necessary, or may be submitted as a separate proposition at the same election or at a different election. Notice of the election shall be given as specified in section 331.305. If the proposition includes issuing bonds and increasing the levy limit, it shall be in substantially the following form:

Shall the county of, state of Iowa, be authorized to (here state purpose of project) at a total cost not exceeding \$..... and issue its general obligation bonds in an amount not exceeding \$..... for that purpose, and be authorized to levy annually a tax not exceeding dollars and cents per thousand dollars of the assessed value of the taxable property within the county to pay the principal of and interest on the bonds?

If the proposition includes only increasing the levy limit it shall be in substantially the following form:

Shall the county of, state of Iowa, be authorized to levy annually a tax not exceeding dollars and cents per thousand dollars of the assessed value of the taxable property within the county to pay principal and interest on the bonded indebtedness of the county for the purpose of?

2. A statutory or voted tax levy limitation does not limit the source of payment of bonds and interest, but only restricts the amount of bonds which may be issued.

3. For the sole purpose of computing the amount of bonds which may be issued as the result of the application of a statutory or voted tax levy limitation, all interest on the bonds in excess of that accruing in the first twelve months may be excluded from the first annual levy of taxes, so that the need for including more than one year's interest on the first annual levy of taxes to pay the bonds and interest does not operate to further restrict the amount of bonds which may be issued, and in certifying the annual levies, the first annual levy of taxes shall be sufficient to pay all principal of and interest on the bonds becoming due prior to the next succeeding annual levy and the full amount of the annual levy shall be entered for collection as provided in chapter 76.

95 Acts, ch 67, §53
Terminology change applied

331.506 Issuance of warrants.

1. Except as provided in subsections 2 and 3, the auditor shall sign or issue a county warrant only after approval of the board by recorded vote. Each warrant shall be numbered and the date, amount, number, name of the person to whom issued, and the purpose for which the warrant is issued, shall be entered in the county system. Each warrant shall be made payable to the person performing the service or furnishing the supplies for which the warrant makes payment.

2. The auditor may issue warrants to pay the following claims against the county without prior approval of the board:

a. Witness fees and mileage for attendance before a grand jury, as certified by the county attorney and the foreman of the jury.

b. Witness fees and mileage in trials of criminal actions prosecuted under county ordinance, as certified by the county attorney.

c. Fees and costs payable to the clerk of the district court or other state officers or employees in connection with criminal and civil actions when due, as shown in the statement submitted by the clerk of court under section 602.8109.

d. Expenses of the grand jury, upon order of a district judge.

3. The board, by resolution, may authorize the auditor to issue warrants to make the following payments without prior approval of the board:

a. For fixed charges including, but not limited to, freight, express, postage, water, light, telephone service or contractual services, after a bill is filed with the auditor.

b. For salaries and payrolls if the compensation has been fixed or approved by the board. The salary or payroll shall be certified by the officer or supervisor under whose direction or supervision the compensation is earned.

4. The bills paid under subsections 2 and 3 shall be submitted to the board for review and approval at its next meeting following the payment. The action of the board shall be recorded in the minutes of the board.

5. An officer certifying an erroneous bill or claim against the county is liable on the officer's official bond for a loss to the county resulting from the error.

95 Acts, ch 57, §3
Subsection 1 amended

331.507 Collection of money and fees.

1. The auditor may collect or receive money due the county except when otherwise provided by law.

2. The auditor is entitled to collect the following fees:

a. For a transfer of property made in the transfer records, five dollars for each separate parcel of real estate described in a deed, or transfer of title certified by the clerk of the district court. However, the fee shall not exceed fifty dollars for a transfer of property which is described in one instrument of transfer.

(1) For the purposes of this paragraph, a parcel of real estate includes:

(a) For real estate located outside of the corporate limits of a city, all contiguous land lying within a numbered section.

(b) For real estate located within the corporate limits of a city, all contiguous land lying within a platted block or subdivision.

(2) Within a numbered section, platted block, or subdivision, land separated only by a public street, alley, or highway remains contiguous.

b. For indexing a change of name for each parcel of real estate owned in the county, five dollars.

3. The auditor shall collect or receive the bee entry fee collected from nonresidents importing bees by the state apiarist as provided under section 160.16.

4. Fees collected or received by the auditor shall be accounted for and paid into the county treasury as provided in section 331.902.

95 Acts, ch 67, §28
Subsection 3 amended

331.508 Books and records.

The auditor shall keep the following books and records:

1. Election book for contested proceedings as provided in section 62.3.

2. Record of official bonds as provided in section 64.24.

3. Lost property book as provided in chapter 556F.

4. Account book and index of persons receiving mental health treatment as provided in section 230.26.

5. A record book of the names and addresses of persons receiving veteran assistance as provided in section 35B.10.

6. Fee book as provided in section 331.902.

7. Benefited water district record book as provided in section 357.32.

8. Completed assessment rolls, schedules and book as provided in section 441.26.

9. Tax rate book as provided in section 444.6.

10. Real estate transfer book, index book, and plat book as provided in sections 558.60 to 558.67.

95 Acts, ch 49, §8
Subsection 3 amended

331.552 General duties.

The treasurer shall:

1. Receive all money payable to the county unless otherwise provided by law.

2. Disburse money owed or payable by the county on warrants drawn and signed by the auditor and sealed with the official county seal.

3. Keep a true account of all receipts and disbursements of the county, which account shall be available for inspection by the board at any reasonable time.

4. Keep the official county seal provided by the county. The official seal shall be an impression seal on the face of which shall appear the name of the county, the word "county" which may be abbreviated, the word "treasurer" which may be abbreviated, and the word "Iowa". The impression of the seal shall be placed on each motor vehicle certificate of title signed by the treasurer.

5. Account for, report, and pay into the state treasury any money, property, or securities received on behalf of the state as provided in sections 421.32 to 421.34.

6. Account for and report to the board the amount of swampland indemnity funds received from the treasurer of state under section 12.16.

7. Register and call tax anticipatory warrants issued for a memorial hospital as provided under section 37.30.

8. Serve on a nomination appeals commission to hear nomination objections filed with the county commissioner of elections as provided in section 44.7.

9. Keep on file the bond and oath of the auditor as provided in section 64.23.

10. Reserved.

11. Serve as treasurer of an area hospital located outside the corporate limits of a city as provided in section 145A.15.

12. Register and call anticipatory warrants related to the sale of limestone as provided in section 353.8.

13. Make transfer payments to the state for school expenses for blind and deaf children, support of the mentally ill, and hospital care for the indigent as provided in sections 230.21, 255.26, 269.2 and 270.7.

14. Transfer funds to pay the expenses of creating or changing the boundaries of a school district as provided in section 275.26.

15. Transfer funds to pay tuition expenses owed by a debtor school district to a creditor school district as provided in section 282.21.

16. Pay to the treasurers of the school corporations located in the county the taxes and other mon-

eys due as provided in section 298.11 and send amounts collected for each fund of a school corporation for direct deposit into the depository and account designated as provided in section 298.13.

17. Pay monthly to the treasurer of state proceeds of public lands sold and escheated estates as provided in section 257B.2 and pay annually on February 1 interest collected from public lands sold on credit as provided in section 257B.5.

18. Maintain a permanent school fund account and records of school funds received as provided in section 257B.31.

19. Carry out duties relating to the sale and redemption of anticipatory certificates for secondary road construction as provided in sections 309.50 to 309.55.

20. Carry out duties relating to the establishment of secondary road assessment districts as provided in chapter 311.

21. Carry out duties relating to the sale and redemption of county bonds as provided in division IV, parts 3 and 4.

22. Notify the chairperson of the county hospital board of trustees and pay to the hospital treasurer the tax revenue collected for the county hospital during the preceding month as provided in section 347A.1.

23. Collect a fee of ten dollars for issuing a tax sale certificate or a certificate of redemption from tax sale.

24. Carry out duties relating to the condemnation of property as provided in section 331.656, subsection 4.

25. Carry out duties relating to the funding of drainage districts as provided in chapter 468, subchapter I, parts 1 to 5, subchapter II, parts 1, 5, and 6, subchapter III, and subchapter IV, parts 1 and 2.

26. Collect and disburse funds for soil and water conservation districts as provided in sections 161A.33 and 161A.34.

27. Credit the remainder of funds received from a hotelkeeper's sale to satisfy a lien to the county general fund as provided in section 583.6.

28. Designate the newspapers in which the official notices of the treasurer's office are to be published as provided in section 618.7.

29. Send, before the fifteenth day of each month, the amount of tax revenue, special assessments, and other moneys collected for each tax-certifying or taxlevying public agency in the county for direct deposit into the depository or financial institution and account designated by the governing body of the public agency. The treasurer shall send notice to the chairperson or other designated officer of the public agency stating the amount deposited, the date, the amount to be credited to each fund according to the budget, and the source of revenue.

30. Carry out other duties as required by law and duties assigned pursuant to section 331.323.

31. Collect all penalties that have accrued prior to April 1, 1992, on unpaid taxes, as defined in section 445.1, and process them as interest.

32. File with the county auditor the name of a designated employee, if other than the first deputy treasurer, authorized to perform the duties of the treasurer during the absence or disability of the treasurer and the name of any employee authorized to sign, on behalf of the treasurer, any form, notice, or document requiring the signature of the treasurer.

95 Acts, ch 57, §4
Subsection 4 amended

331.553 General powers.

The treasurer may:

1. Administer oaths and take affirmations as provided in sections 63A.2 and 421.21.
2. Subject to the requirements of section 331.903, appoint and remove deputies, clerks and assistants.
3. Require that payment be made by guaranteed funds for tax sale redemptions, issuance of plat clearances, issuance of tax clearances for mobile homes, payments of taxes or assessments made within the ten days prior to the annual tax sale or any adjournment of the tax sale, and any other payment which is to be collected by the county treasurer. For the purposes of this subsection, "guaranteed funds" means cash, cashier's check, money order, travelers' check, or certified check.
4. Charge five dollars, as an administrative expense, for every rate, charge, rental, or special assessment certified as a lien to the treasurer for collection. This amount shall be added to the amount of the lien, collected at the time of payment from the payor, and credited to the county general fund.

95 Acts, ch 57, §5
NEW subsection 4

331.554 Duties relating to warrants.

1. Upon receipt of a warrant, scrip, or other evidence of the county's indebtedness, the treasurer shall endorse on it the date of payment.

2. Reserved.

3. The treasurer shall enter into the county system the warrant number, date paid, and interest paid, if any.

4. The treasurer shall return the paid warrants to the auditor. The original warrant shall be preserved for at least two years. The treasurer shall make monthly reports to show for each warrant the number, date, drawee's name, when paid, to whom paid, original amount, and interest.

5. *a.* When a warrant legally drawn on the county treasury is presented for payment and not paid because of a deficiency, the treasurer shall carry out duties relating to the endorsement and payment of interest on the amount of deficiency as provided in chapter 74.

b. In lieu of the requirements and procedures specified in sections 74.1, 74.2, and 74.3, when warrants other than anticipatory warrants are presented for payment and not paid for want of funds or are only partially paid, the treasurer may issue a warrant order for an amount equal to the unpaid warrants drawn on a fund. The warrant order shall be dated and

include the fund name, amount, and the rate of interest established under section 74A.6. The warrant order shall be endorsed by the treasurer, "not paid for want of funds", and include the treasurer's signature. The treasurer shall keep a list of all warrants comprising a warrant order and shall submit a duplicate copy of the warrant order to the auditor. The procedures of sections 74.4 to 74.7 apply to warrant orders.

6. The amount of a check outstanding for more than two years shall be paid to the treasurer and credited as unclaimed fees and trusts. The treasurer shall provide a list of the checks to the auditor who shall maintain a record of the unclaimed fees and trusts. A person may claim an unclaimed fee or trust within five years after the money is credited upon proper proof of ownership.

7. A warrant outstanding for more than two years shall be canceled by the auditor and the amount of the warrant shall be credited to the fund upon which the warrant was drawn. A person may file a claim with the auditor for the amount of the canceled warrant within five years of the date of the cancellation, and upon showing of proper proof that the claim is true and unpaid, the auditor shall issue a warrant drawn upon the fund from which the original canceled warrant was drawn. This subsection does not apply to warrants issued upon drainage or levee district funds or any fund upon which the county treasurer has issued a warrant order or stamped a warrant for want of funds.

95 Acts, ch 57, §6, 7
Subsections 1, 3, and 4 amended
Subsection 2 stricken

331.555 Fund management.

1. During each term of office, the treasurer shall keep a separate account of the taxes levied for state, county, school, highway, or other purposes and of all other funds created by law whether of regular, special, or temporary nature. The treasurer shall not pay out or use the money in a fund for any purpose except as specifically authorized by law. The treasurer shall be charged with the amount of tax or other funds collected or received by the treasurer and shall be credited with the amount of taxes or other funds disbursed from each account as authorized by law.

2. Except as provided in section 321.153, on or before the fifteenth day of each month, the treasurer shall prepare sworn statements of the amount of money held by the treasurer on the last day of the preceding month belonging to the state treasury and mail a copy of the statement and the remittance to the treasurer of state. Another copy of the statement shall be mailed to the director of revenue and finance. However, in lieu of mailing the remittance to the treasurer of state, the treasurer may deposit the remittance to the credit of the treasurer of state in an interest-bearing account in a bank in the county as designated by the treasurer of state.

3. If a treasurer fails to comply with the requirements of subsection 2, the treasurer shall forfeit for each failure a sum of not less than one hundred

dollars nor more than five hundred dollars to be recovered in an action against the treasurer's bond brought in the name of the director of revenue and finance or the treasurer of state.

4. The treasurer shall make a complete settlement with the county semiannually and when the treasurer leaves office as provided in section 12B.7.

5. The treasurer shall maintain custody of all public moneys in the treasurer's possession and deposit or invest the moneys as provided in section 12B.10 and chapter 12C.

6. The treasurer shall keep all funds invested to the extent practicable and may invest the funds jointly with one or more counties, judicial district departments of correctional services, cities, city utilities, or rural water districts created under chapter 357A pursuant to a joint investment agreement. All investments of funds shall be subject to sections 12B.10 and 12B.10A and other applicable law.

95 Acts, ch 77, §1
Subsection 6 amended

331.602 General duties.

The recorder shall:

1. Record all instruments presented to the recorder's office for recordation upon payment of the proper fees and compliance with other recording requirements as provided by law. The instruments presented for filing or recordation shall be legible and reproducible, and shall have typed or legibly printed on them the names of all signatories including the names of acknowledging officers and witnesses beneath the original signatures. The instruments shall be no larger than eight and one-half inches by fourteen inches and shall provide a space at the top of the instrument at least eight and one-half inches across the page by two inches in length, on which space shall be typed or legibly printed across the page on the bottom one-fourth inch of this space, the name, address, and telephone number of the individual who prepared the instrument. The remaining portion of this space shall be reserved for use by the county recorder, except as otherwise authorized by the recorder.

a. However, if an instrument does not contain typed or printed names, the recorder shall accept the instrument for recordation or filing if it is accompanied by an affidavit, to be recorded with the instrument, correctly spelling in legible print or type the signatures appearing on the instrument.

b. The requirement of paragraph "a" does not apply to military discharges, military instruments, wills, court records, or to any other instrument dated before July 4, 1959.

c. Failure to print or type signatures as provided in this subsection does not invalidate the instrument.

2. Rerecord an instrument without fee upon presentation of the original instrument by the owner if an error is made in recording the instrument. The recorder shall also note in the margin of the new record a reference to the original record and in the margin of the original record a reference to the book and page of the new record.

3. If an error is made in indexing an instrument, reindex the instrument without fee.

4. Record the registration of a person registered under the federal Social Security Act who requests recordation, and keep an alphabetical index of the record referring to the name of the person registered.

5. Compile a list of deeds recorded in the recorder's office after July 4, 1951, which are dated or acknowledged more than six months before the date of recording and forward a copy of the list each month to the inheritance tax division of the department of revenue and finance.

6. Carry out duties as a member of a nomination appeals commission as provided in section 44.7.

7. Carry out duties relating to the recordation of oil and gas leases as provided in sections 458A.22 and 458A.24.

8. Endorse on each notice of an unemployment contribution lien the day, hour, and minute that the lien is received from the division of job service of the department of employment services, index the notice of lien, and record the lien as provided in section 96.14, subsection 3.

9. Carry out duties relating to the registration of vessels as provided in sections 462A.5, 462A.23, 462A.51, 462A.52, 462A.54 and 462A.55.

10. Carry out duties relating to the issuance of hunting, fishing, and trapping licenses as provided in sections 483A.10, 483A.12, 483A.13, 483A.14, 483A.15 and 483A.22.

11. Issue migratory waterfowl stamps as provided in chapter 484A.

12. Record the orders and decisions of the fence viewers and index the record in the name of each adjoining owner of land affected by the order or decision as provided in section 359A.10. The recorder shall also note that a judgment has been rendered on an appeal of an order or decision of the fence viewers as provided in section 359A.24.

13. Record the articles of incorporation of farm aid associations as provided in section 176.5 for the fee specified in section 331.604.

14. Keep, as a public record, the brand book and supplements supplied by the secretary of agriculture as provided in section 169A.11.

15. Record without fee a sheriff's deed for land under foreclosure procedures as provided in section 257B.35.

16. Issue snowmobile registrations as provided in sections 321G.4, 321G.6, and 321G.21.

17. Record the measure and plat of a zoning district, building line, or fire limit adopted by a city as provided in section 380.11.

18. Carry out duties relating to the platting of land as provided in chapter 354.

19. Submit monthly to the director of revenue and finance a report of the real property transfer tax received.

20. Carry out duties relating to the endorsement, indexing, and recording of income tax liens as provided in section 422.26.

21. Carry out duties relating to the taxation of real estate transfers as provided in chapter 428A.

22. Carry out duties relating to the recording and indexing of affidavits and claims affecting real estate as provided in section 448.17.

23. Forward to the director of revenue and finance a certified copy of any deed, bill of sale or other transfer which shows that it is made or intended to take effect at or after the death of the person executing the instrument as provided in section 450.81.

24. Record papers, statements, and certificates relating to the condemnation of property as provided in section 6B.38.

25. Carry out duties relating to the recordation of articles of incorporation and other instruments for state banks as provided in chapter 524.

26. Carry out duties relating to the recordation of articles of incorporation and other instruments for credit unions as provided in chapter 533.

27. Carry out duties relating to the recordation of articles of incorporation and other instruments for savings and loan associations as provided in chapter 534.

28. Carry out duties relating to the filing of financing statements or instruments as provided in sections 554.9401 to 554.9408.

29. Register the name and description of a farm as provided in sections 557.22 to 557.26.

30. Record a statement of claim provided in chapter 557C relating to mineral interests in coal.

31. Record conveyances and leases of agricultural land as provided in section 558.44.

32. Collect the recording fee and the auditor's transfer fee for real property being conveyed as provided in section 558.58.

33. Serve as a member of the jury commission to draw jurors as provided in section 607A.9.

34. Record and index a notice of title interest in land as provided in section 614.35.

35. Designate the newspapers in which the notices pertaining to the office of recorder shall be published as provided in section 618.7.

36. Record a conveyance of property presented by a commissioner appointed by the district court as provided in section 624.35.

37. Carry out duties relating to the indexing of name changes, and the recorder shall charge a fee for indexing as provided in section 331.604.

38. Report to the board the fees collected as provided in section 331.902.

39. Carry out other duties as provided by law and duties assigned pursuant to section 331.323.

95 Acts, ch 160, §1

1995 amendment to subsection 1 applies to instruments signed or notarized on or after January 1, 1996; 95 Acts, ch 160, §2

See 95 Acts, ch 124, §10 and 24-26, for future amendment to this section relating to the transfer of vital statistics duties effective July 1, 1997

Subsection 1 amended

331.610 Abolition of office of recorder — identification of office — place of filing.

If the office of county recorder is abolished in a county, the auditor of that county shall be referred to as the county auditor and recorder. After abolition of the office of county recorder, references in the Code requiring filing or recording of documents with the

county recorder shall be deemed to require the filing in the office of the county auditor and recorder, and all duties of the abolished office of recorder shall be performed by the county auditor and recorder. However, the board of supervisors may direct that any of the duties of the abolished office of recorder prescribed in section 331.602, subsection 9, 10, 11, or 16, or section 331.605, subsection 1, 2, 3, or 4, shall be performed by other county officers or employees as provided in section 331.323.

95 Acts, ch 38, §1

Section stricken and rewritten

331.653 General duties of the sheriff.

The sheriff shall:

1. Execute and return all writs and other legal process issued to the sheriff by legal authority. The sheriff shall execute and return any legal process in the sheriff's possession at the expiration of the sheriff's term of office and if a vacancy occurs in the office of sheriff, the sheriff's deputies shall execute and return the legal processes in their possession as if the sheriff had continued in office. The sheriff's successor or other officer authorized to discharge the duties of the office of sheriff may execute and return the legal processes on behalf of the outgoing sheriff and the sheriff's deputies, but the outgoing sheriff and the sheriff's deputies remain liable for the execution and return of the legal processes in their possession when the sheriff leaves office or the vacancy occurs.

2. Upon written order of the county attorney, make a special investigation of any alleged infraction of the law within the county and report the findings to the county attorney within a reasonable time. Upon completion of the investigation, the sheriff shall file with the auditor a detailed, sworn statement of the expenses of the investigation accompanied by the written order of the county attorney. The board shall audit and pay the reasonable and necessary expenses of the investigation.

3. Upon leaving office, deliver to the sheriff's successor and take the successor's receipt for all books and papers pertaining to the office except as provided in subsection 1, property attached and levied upon, and prisoners in the county jail. The receipt is sufficient indemnity to the outgoing sheriff.

4. Provide bailiff and other law enforcement service to the district judges, district associate judges, and judicial magistrates of the county upon request.

5. Serve as a member of the joint emergency management commission as provided in section 29C.9.

6. Enforce the provisions of chapter 718A relating to the desecration of flags and insignia.

7. Carry out duties relating to election contests as provided in sections 57.6, 62.4 and 62.19.

8. Carry out duties relating to the seizure and disposition of illegal oil and gas supplies as provided in section 458A.15.

9. Serve a notice or subpoena received from a board of arbitration as provided in section 679B.10.

10. Co-operate with the division of labor services of the department of employment services in the

enforcement of child labor laws as provided in section 92.22.

11. Carry out duties relating to the seizure and forfeiture of cigarettes, vehicles and other property used in violation of cigarette tax laws as provided in section 453A.32.

12. Observe and inspect any licensed premise for gambling devices and report findings to the license-issuing authority as provided in section 99A.4.

13. Carry out duties relating to the issuance of permits for the possession, transportation and detonation of explosive materials as provided in sections 101A.3, 101A.5, 101A.7, and 101A.8.

14. Seize fish and game taken, possessed or transported in violation of the state fish and game laws as provided in section 481A.12.

15. Carry out duties relating to the enforcement of state liquor and beer laws as provided in sections 123.14, 123.117, and 123.118.

16. Reserved.

17. Enforce the payment of the mobile home tax as provided in section 435.24.

18. Carry out duties relating to the reporting of persons injured in the commission of a crime, either as perpetrators or victims, as provided in sections 147.111 and 147.112.

19. Carry out duties relating to the enforcement of livestock transportation laws as provided in chapter 172B.

20. Investigate disputes in the ownership or custody of branded animals as provided in section 169A.10.

21. Reserved.

22. Reserved.

23. Carry out duties relating to the involuntary hospitalization of mentally ill persons as provided in sections 229.7 and 229.11.

24. Carry out duties relating to the investigation of reported child abuse cases and the protection of abused children as provided in section 232.71.

25. Remove, upon court order, an indigent person to the county or state of the person's legal settlement as provided in section 252.18.

26. File a complaint upon receiving knowledge of an indigent person who is ill and may be improved, cured or advantageously treated by medical or surgical treatment or hospital care as provided in section 255.2.

27. Give notice of the time and place of making an appraisal of unneeded school land as provided in sections 297.17 and 297.28.

28. Co-operate with the department of transportation, the department of public safety, and other law enforcement agencies in the enforcement of local and state traffic laws and inspections as provided in sections 321.5 and 321.6.

29. Report the theft and recovery of a registered motor vehicle as provided in section 321.72.

30. Collect unpaid motor vehicle fees and penalties as provided in sections 321.133 to 321.135.

31. Reserved.

32. Enforce sections 321.372 to 321.379 relating to school buses.

33. Carry out duties relating to the enforcement of laws prohibiting the operation of a motor vehicle while under the influence of an alcoholic beverage as provided in chapter 321J.

34. Upon request, assist the department of revenue and finance and the state department of transportation in the enforcement of motor fuel tax laws as provided in section 452A.76.

35. Have charge of the county jails in the county and custody of the prisoners committed to the jails as provided in chapter 356.

36. Reserved.

37. Reserved.

38. Notify the department of natural resources of hazardous conditions of which the sheriff is notified as provided in section 455B.386.

39. Carry out duties relating to condemnation of private property as provided under chapter 6B.

40. Carry out duties relating to the removal and disposition of abandoned motor vehicles as provided in section 556B.1.

41. Carry out duties relating to the determination of what is included in a homestead as provided in section 561.8.

42. Carry out duties relating to liens for services of animals as provided in chapter 580.

43. Carry out duties relating to the service of notice on a jury commissioner or jury manager as provided in section 607A.44.

44. Reserved.

45. Designate the newspapers in which notices pertaining to the sheriff's office are published as provided in section 618.7.

46. Carry out duties relating to the execution of judgments and orders of the court as provided in chapter 626.

47. Add the amount of an advancement made by the holder of the sheriff's sale certificate to the execution, upon verification by the clerk as provided by section 629.3.

48. Upon appointment of the court, serve as a receiver of property of a judgment debtor as provided in sections 630.7 and 630.9.

49. Carry out duties relating to the attachment of property as provided in chapters 639, 640 and 641.

50. Carry out duties relating to garnishment under chapter 642.

51. Carry out duties relating to an action of replevin as provided in chapter 643.

52. Carry out orders of the court or a judge relating to the service or execution of a writ of habeas corpus as provided under chapter 663.

53. Carry out duties relating to the disposition of lost property as provided in chapter 556F.

54. Carry out orders of the court requiring the sheriff to take custody and deposit or deliver trust funds as provided in section 636.30.

55. Carry out legal processes directed by an appellate court as provided in section 625A.14.

56. Furnish the bureau of criminal identification with the criminal identification records and other information upon direction by the commissioner of public safety as provided in section 690.1.

57. Take the fingerprints of all persons specified under section 690.2 and forward the fingerprint records to the commissioner of public safety.

58. Report information on crimes committed and delinquent acts committed, which would be an aggravated misdemeanor or felony if committed by an adult, and furnish disposition reports on persons arrested and juveniles taken into custody, for a delinquent act which would be an aggravated misdemeanor or felony if committed by an adult, and criminal complaints or information or juvenile delinquency petitions, alleging a delinquent act which would be an aggravated misdemeanor or felony if committed by an adult, filed in any court as provided in section 692.15.

59. Carry out duties relating to firearm training and the issuance and revocation of firearm permits as provided in chapter 724.

60. Accept custody of persons handed over to the sheriff by the department of public safety as provided in section 804.28.

61. Carry out duties relating to the forfeiture and judgment of bail as provided in section 811.6.

62. Resume custody of a defendant who is recommitted after bail by order of a magistrate as provided in section 811.7.

63. Carry out duties relating to the confinement of mentally ill persons or dangerous persons as provided in section 812.5.

64. Release a defendant in custody upon receipt of a certificate of release as provided in section 814.14.

65. Upon call of the governor or attorney general, render assistance in the enforcement of the law as provided in section 817.2.

66. Upon court order, take an accused person into custody from the warden of a penal institution and convey the person to the place of trial as provided in rule of criminal procedure 7.

67. Receive and detain a defendant transferred from another county under a change of venue as provided in rule of criminal procedure 10, subsection 10.

68. Carry out duties relating to the execution of a judgment for confinement or other execution as provided in rule of criminal procedure 24.

69. Carry out duties relating to the return of service in civil cases as provided in rule of civil procedure 59.

70. Serve a writ of certiorari as provided in rule of civil procedure 312.

71. Carry out other duties required by law and duties assigned pursuant to section 331.323.

95 Acts, ch 67, §29; 95 Acts, ch 191, §24
Subsections 53 and 58 amended

2. Appear for the state and the county in all cases and proceedings in the courts of the county to which the state or the county is a party, except actions or proceedings resulting from a change of venue from another county, and appear in the appellate courts in all cases in which the county is a party, and appear in all actions or proceedings which are transferred on a change of venue to another county or which require the impaneling of a jury from another county and in which the county or the state is a party.

3. Prosecute all preliminary hearings for charges triable upon indictment.

4. Prosecute misdemeanors when not otherwise engaged in the performance of other official duties.

5. Enforce all forfeited bonds and recognizances and prosecute all proceedings necessary for the recovery of debts, revenues, moneys, fines, penalties, restitution of court-appointed attorney fees or expense of a public defender, and forfeitures accruing to the state, the county or a road district in the county, and all suits in the county against public service corporations which are brought in the name of the state. To assist in this duty, the county attorney may procure professional collection services provided by persons or organizations, including private attorneys, which are generally considered to have knowledge and special abilities which are not generally available to state or local government or may designate another county official or agency to assist with collection efforts.

If professional collection services are procured, the county attorney shall file with the clerk of the district court an indication of the satisfaction of each obligation to the full extent of all moneys collected in satisfaction of that obligation, including all fees and compensation retained by the collection service incident to the collection and not paid into the office of the clerk.

Before a county attorney designates another county official or agency to assist with collection of debts, revenues, moneys, fines, penalties, restitution of court-appointed attorney fees or expense of a public defender, and forfeitures, the board of supervisors of the county must approve the designation.

All fines, penalties, court costs, fees, and restitution for court-appointed attorney fees or expenses of a public defender which are delinquent as defined in section 602.8107 may be collected by the county attorney or the person procured or designated by the county attorney. In order to receive a percentage of the amounts collected pursuant to section 602.8107, the county attorney must file annually with the clerk of the district court on or before July 1 a notice of full commitment to collect delinquent obligations and must file on the first day of each month a list of the cases in which the county attorney or the person procured or designated by the county attorney is pursuing the collection of delinquent obligations. The annual notice shall contain a list of procedures which will be initiated by the county attorney. Amounts collected by the county attorney or the person procured or designated by the county attorney shall be distributed in accordance with section 602.8107.

331.756 Duties of the county attorney.

The county attorney shall:

1. Diligently enforce or cause to be enforced in the county, state laws and county ordinances, violations of which may be commenced or prosecuted in the name of the state, county, or as county attorney, except as otherwise provided.

6. Commence, prosecute, and defend all actions and proceedings in which a county officer, in the officer's official capacity, or the county is interested or a party.

7. Give advice or a written opinion, without compensation, to the board and other county officers and to school and township officers, when requested by an officer, upon any matters in which the state, county, school, or township is interested, or relating to the duty of the officer in any matters in which the state, county, school, or township may have an interest, but the county attorney shall not appear before the board at a hearing in which the state or county is not interested.

8. Attend the grand jury when necessary for the purpose of examining witnesses before it or giving it legal advice. The county attorney shall procure subpoenas or other process for witnesses and prepare all informations and bills of indictment.

9. Give a receipt to all persons from whom the county attorney receives money in an official capacity and file a duplicate receipt with the county auditor.

10. Make reports relating to the duties and the administration of the county attorney's office to the governor when requested by the governor.

11. Co-operate with the auditor of state to secure correction of a financial irregularity as provided in section 11.15.

12. Submit reports as to the condition and operation of the county attorney's office when required by the attorney general as provided in section 13.2, subsection 7.

13. Reserved.

14. Hear and decide objections to a nomination filed with the county election commissioner as provided in section 44.7.

15. Review the report and recommendations of the ethics and campaign disclosure board and proceed to institute the recommended actions or advise the board that prosecution is not merited, as provided in sections 68B.32C and 68B.32D.

16. Prosecute or assist in the prosecution of actions to remove public officers from office as provided in section 66.11.

17. Institute legal proceedings against persons who violate laws administered by the division of labor services of the department of employment services as provided in section 91.11.

18. Investigate complaints and prosecute violations of child labor laws as provided in section 92.22.

19. Prosecute violations of employment security laws and rules as provided in section 96.17, subsection 2.

20. Assist, at the request of the director of revenue and finance, in the enforcement of cigar and tobacco tax laws as provided in sections 453A.32 and 453A.49.

21. Prosecute nuisances as provided in section 99.24.

22. Attend the hearing, interrogate witnesses, and advise a license-issuing authority relating to the revocation of a license for violation of gambling laws as provided in section 99A.7. The county attorney

shall also represent the license-issuing authority in appeal proceedings taken under section 99A.6.

23. Represent the state fire marshal in legal proceedings as provided in section 100.20.

24. Prosecute, at the request of the director of the department of natural resources or an officer appointed by the director, violations of the state fish and game laws as provided in section 481A.35.

25. Assist the division of beer and liquor law enforcement in the enforcement of beer and liquor laws as provided in section 123.14. The county attorney shall also prosecute nuisances, forfeitures of abatement bonds, and foreclosures of the bonds as provided in sections 123.62 and 123.86.

26. Reserved.

27. Serve as attorney for the county health care facility administrator in matters relating to the administrator's service as a conservator or guardian for a resident of the health care facility as provided in section 135C.24.

28. Reserved.

29. At the request of the director of public health, commence legal action to enjoin the unlawful use of radiation-emitting equipment as provided in section 136C.5.

30. Reserved.

31. Prosecute violations of the Iowa veterinary practice Act as provided in section 169.19.

32. Assist the department of inspections and appeals in the enforcement of the food establishment laws, the Iowa food service sanitation code, and the Iowa hotel sanitation code as provided in sections 137A.26, 137B.21, and 137C.30.

33. Institute legal procedures on behalf of the state to prevent violations of the corporate or partnership farming laws as provided in section 9H.3.

34. Prosecute violations of the Iowa dairy industry laws as provided in section 179.11.

35. Prosecute persons who fail to file an annual or special report with the secretary of agriculture under the meat and poultry inspection Act as provided in section 189A.17.

36. Co-operate with the secretary of agriculture in the enforcement of label requirements for food packages as provided in section 191.7.

37. Prosecute violations of the Iowa commercial feed law as provided in section 198.13, subsection 3.

38. Co-operate with the secretary of agriculture in the enforcement of the agricultural seed laws as provided in section 199.14.

39. Prosecute violations of the Iowa fertilizer law as provided in section 200.18, subsection 4.

40. Prosecute violations of the Iowa drug, device, and cosmetic Act as requested by the board of pharmacy examiners as provided in section 126.7.

41. Provide the Iowa department of corrections with information relating to the background and criminal acts committed by each person sentenced to a state correctional institution from the county as provided in section 904.202.

42. Carry out duties relating to the commitment of a mentally retarded person as provided in section 222.18.

43. Proceed to collect, as requested by the county, the reasonable costs for the care, treatment, training, instruction, and support of a mentally retarded person from parents or other persons who are legally liable for the support of the mentally retarded person as provided in section 222.82.

44. At the direction of a district court judge, investigate the financial condition of a person under commitment proceedings to the state psychiatric hospital or those legally responsible for the person as provided in section 225.13.

45. Appear on behalf of the administrator of the division of mental health and developmental disabilities of the department of human services in support of an application to transfer a person with mental illness who becomes incorrigible and dangerous from a state hospital for the mentally ill to the Iowa medical and classification center as provided in section 226.30.

46. Carry out duties relating to the hospitalization of persons for mental illness as provided in section 229.12.

47. Carry out duties relating to the collection of the costs for the care, treatment, and support of mentally ill persons as provided in sections 230.25 and 230.27.

48. Carry out duties relating to the care, guidance, and control of juveniles as provided in chapter 232.

49. Prosecute violations of law relating to the family investment program, medical assistance, and supplemental assistance as provided in sections 239.20, 249.13, and 249A.14.

50. Commence legal proceedings to enforce the rights of children placed under foster care arrangements as provided in section 233A.11.

51. Commence legal proceedings, at the request of the superintendent of the Iowa juvenile home, to recover possession of a child as provided in section 233B.12.

52. Furnish, upon request of the governor, a copy of the minutes of evidence and other pertinent facts relating to an application for a pardon, reprieve, commutation, or remission of a fine or forfeiture as provided in section 914.5.

53. Carry out duties relating to the provision of medical and surgical treatment for an indigent person as provided in sections 255.7 and 255.8.

54. Commence legal proceedings to recover school funds as provided in section 257B.33.

55. At the request of the state geologist, commence legal proceedings to obtain a copy of the map of a mine or mine extension as provided in section 460A.13.

56. Enforce, upon complaint, the performance of duties by officers charged with the responsibilities of controlling or eradicating noxious weeds as provided in section 317.23.

57. Commence legal proceedings to remove billboards and signs which constitute a public nuisance as provided in section 319.11.

58. Reserved.

59. Assist, upon request, the department of

transportation's general counsel in the prosecution of violations of common carrier laws and regulations as provided in section 327C.30.

60. Enforce the control of vegetation on railroad property by the railroad corporations as provided in section 327F.29.

61. Appoint a member of the civil service commission for deputy sheriffs as provided in section 341A.2 or 341A.3.

62. Represent the civil service commission for deputy sheriffs in civil suits initiated by the commission for the proper enforcement of the civil service law as provided in section 341A.16.

63. Present to the grand jury at its next session a copy of the report filed by the division of corrections of the department of human services of its inspection of the jails in the county as provided in section 356.43.

64. Represent the township trustees in counties having a population of less than twenty-five thousand except when the interests of the trustees and the county are adverse as provided in section 359.18.

64A. Reserved.

64B. Make a written report to the department of inspections and appeals within fifteen days of the end of each calendar quarter of the amount of funds which were owed to the state for indigent defense services and which were recouped pursuant to subsection 5.

65. Represent the assessor and the board of review in legal proceedings relating to assessments as provided in section 441.41.

66. Represent the state in litigation relating to the inheritance tax if requested by the department of revenue and finance as provided in section 450.1.

67. Institute proceedings to enjoin persons from violating water treatment laws as provided in section 455B.224.

68. Conduct legal proceedings relating to the condemnation of private property as provided in section 6B.2.

69. Prosecute persons erecting or maintaining an electric transmission line across a railroad track except as authorized by the natural resource commission at the request of the commission as provided in section 478.29.

70. Institute legal proceedings against violations of insurance laws as provided in sections 511.7 and 515.93.

70A. Reserved.

71. Assist, as requested by the attorney general, with the enforcement of the Iowa competition law as provided in section 553.7.

72. Initiate proceedings to enforce provisions relating to the recordation of conveyances and leases of agricultural land as provided in section 558.44.

73. Reserved.

74. Bid on real estate on behalf of the county when necessary to secure the county from loss as provided by section 569.2.

75. Reserved.

76. Reserved.

77. Prosecute a complaint to establish paternity and compel support for a child as provided in section 600B.19.

78. Give to an accused person a copy of each report of the findings of the criminalistics laboratory in the investigation of an indictable criminal charge against the accused as provided in section 691.4.

79. Notify state and local governmental agencies issuing licenses or permits, of a person's conviction of obscenity laws relating to minors as provided in section 728.8.

80. In the case of appeal from the district court, furnish the attorney general with a copy of the notice of appeal and pertinent material from the district court proceedings as provided in section 814.8.

81. Certify fees and mileage payable to witnesses subpoenaed by the county attorney before the district court as provided in section 815.3.

82. Carry out duties relating to extradition of fugitive defendants as provided in chapter 818.

83. Advise the director of the judicial district department of correctional services of the facts and circumstances surrounding the crime committed and the record and history of the defendant granted probation as provided in section 907.8.

84. Bring an action in the nature of quo warranto as provided in rule of civil procedure 300.

85. Perform other duties required by law and duties assigned pursuant to section 331.323.

95 Acts, ch 49, §9; 95 Acts, ch 143, §9; 95 Acts, ch 169, §3
1995 amendment to subsection 5, unnumbered paragraph 4, effective January 1, 1996; 95 Acts, ch 169, §10
Subsection 5, unnumbered 4 amended
NEW subsection 23
Subsection 58 stricken

CHAPTER 336

COUNTY LIBRARIES

336.2 Library districts formed.

A county library district may be established composed of one county or two or more adjacent counties and may include or exclude the entirety of a city partly within one of the counties.

Eligible electors residing within the proposed district in a number not less than five percent of those voting for president of the United States or governor, as the case may be, within said district at the last general election may petition the board of supervisors of the county or counties for the establishment of such county library district. Said petition shall clearly designate the area to be included in the district.

The board of supervisors of each county containing area within the proposed district shall submit the proposition to the registered voters within their respective counties at any general or primary election provided said election occurs not less than forty days after the filing of the petition.

A county library district shall be established, if a majority of the electors voting on the proposition and residing outside of cities maintaining a free public library favor it.

The result of the election within cities maintaining a free public library shall be considered separately, and no city shall be included within the county library district unless a majority of its electors, voting on the proposition, favor its inclusion. In such cases the boundaries of an established district may vary from those of the proposed district.

After the establishment of a county library district other areas may be included by mutual agreement of the board of trustees of the county library district and the governing body of the area sought to be included.

95 Acts, ch 67, §53
Terminology change applied

CHAPTER 346

COUNTY BONDS

346.27 "Authority" for control of joint property.

1. Any joint building acquired, owned, erected, constructed, controlled, or occupied in accordance with the authorization contained in this section is declared to be acquired, owned, erected, constructed, controlled, or occupied for a public purpose and as a matter of public need.

2. Any county may join with its county seat to incorporate an "Authority" for the purpose of acquiring, constructing, demolishing, improving, enlarging,

equipping, furnishing, repairing, maintaining, and operating a public building, and to acquire and prepare the necessary site, including demolition of any structures, for the joint use of the county and city or any school district which is within or is a part of the county or city.

3. The incorporation of an authority shall be accomplished by the adoption of articles of incorporation by the governing body of each incorporating unit. For adoption, the affirmative vote of a majority of the members of each governing body is required. The

articles of incorporation shall be executed for and on behalf of each incorporating unit by the following officers:

a. For the county, by the chairperson of the board of supervisors.

b. For the city, by its mayor and city clerk.

4. The articles of incorporation shall set forth the name of the authority, the name of the incorporating units, the purpose for which the authority is created, the number, terms, and manner of selection of its officers including its governing body which shall be known as the "*commission*", the powers and duties of the authority and of its officers, the date upon which the authority becomes effective, the name of the newspaper in which the articles of incorporation shall be published, and any other matters.

5. The authority shall be directed and governed by a board of commissioners of three members, one to be elected by the board of supervisors of the county from the area outside of the county seat, one to be elected by the council of the city from the area inside the city, and one to be elected by the joint action of the board of supervisors of the county and the council of the city, and if the governing bodies are unable to agree upon a choice for the third member within sixty days of the election of the first member, then the third member shall be appointed by the governor. The commissioners shall serve for six-year terms. Of the first appointees, the member appointed by the board of supervisors shall be for a term of two years, the member appointed by the city council shall be for a term of four years, and the member appointed by the joint action of the board and council shall be for a term of six years. The board of commissioners shall designate one of their number as chairperson, one as secretary, and one as treasurer, and shall adopt by-laws and rules of procedure and provide therein for regular meetings and for the proper safekeeping of its records. No commissioner shall receive any compensation in connection with services as commissioner. Each commissioner, however, shall be entitled to reimbursement for any necessary expenditures in connection with the performance of the commissioner's duties.

6. The articles of incorporation shall be recorded in the office of the county recorder and filed with the secretary of state, and shall be published once in a newspaper designated in the articles of incorporation and having a general circulation within the county, and upon such recording and publication, the authority shall be deemed to come into existence.

7. Amendments may be made to the articles of incorporation if adopted by the governing body of each incorporating unit; provided that no amendment shall impair the obligation of any bond or other contract. Each amendment shall be adopted, executed, recorded and published in the same manner as specified for the original articles of incorporation.

8. Any incorporating unit may make donations of property, real or personal, including gratuitous lease, to the authority as deemed proper and appropriate in aiding the authority to effectuate its purposes.

9. The authority shall be a body corporate with power to sue and be sued in any court of this state, have a seal and alter the same at its pleasure, and make and execute contracts, leases, deeds, and other instruments necessary or convenient to the exercise of its powers. In addition, it shall have and exercise the following public and essential governmental powers and functions and all other powers incidental or necessary to carry out and effectuate its express powers:

a. To select, locate, and designate an area lying wholly within the territorial limits of the county seat of the county in which the authority is incorporated as the site to be acquired for the construction, alteration, enlargement, or improvement of a building. The site selected is subject to approval by a majority of the members of each governing body of the incorporating units.

b. To acquire in the corporate name of the authority the fee simple title to the real property located within the area by purchase, gift, devise, or by the exercise of the power of eminent domain, or to take possession of real estate by lease.

c. To demolish, repair, alter, or improve any building within the designated area, to construct a new building within the area and to furnish, equip, maintain, and operate the building.

d. To construct, repair, and install streets, sidewalks, sewers, water pipes, and other similar facilities and otherwise improve the site.

e. To make provisions for off-street parking facilities.

f. To operate, maintain, manage, and enter into contracts for the operation, maintenance, and management of buildings, and to provide rules for the operation, maintenance and management.

g. To employ and fix the compensation of technical, professional, and clerical assistance as necessary and expedient to accomplish the objects and purposes of the authority.

h. To lease all or any part of a building to the incorporating units for a period of time not to exceed fifty years, upon rental terms agreed upon between the authority and the incorporating units. The rentals specified shall be subject to increase by agreement of the incorporating units and the authority if necessary in order to provide funds to meet obligations.

i. To procure insurance of any and all kinds in connection with the building. The bidding procedures provided in section 73A.18 shall be utilized in the procurement of insurance.

j. To accept donations, contributions, capital grants, or gifts from individuals, associations, municipal and private corporations, and the United States, or any agency or instrumentality thereof, and to enter into agreements in connection therewith.

k. To borrow money and to issue and sell revenue bonds in an amount and with maturity dates not in excess of fifty years from date of issue, to provide funds for the purpose of acquiring, constructing, demolishing, improving, enlarging, equipping, furnish-

ing, repairing, maintaining, and operating buildings, and to acquire and prepare sites, convenient therefor, and to pay all incidental costs and expenses, including, but not limited to architectural, engineering, legal, and financing expense and to refund and re-finance revenue bonds as often as deemed advantageous by the board of commissioners.

l. The provisions of chapter 73A applicable to other municipalities are applicable to an authority.

10. After the incorporation of an authority, and before the sale of any issue of revenue bonds, except refunding bonds, the authority shall submit in a single countywide election to the registered voters of the city and county, at a general, primary, or special election called for that purpose, the question of whether an authority shall issue and sell revenue bonds, stating the amount, for any of the purposes for which it is incorporated. An affirmative vote of a majority of the votes cast on the proposition is required to authorize the issuance and sale of revenue bonds. A notice of the election shall be published once each week for at least two weeks in some newspaper published in the county. The notice shall name the time when the question shall be submitted, and a copy of the question to be submitted shall be posted at each polling place during the day of election. The authority shall call this election with the concurrence of both incorporating units, and it shall establish the voting precincts and polling places, and appoint the election judges, and in so doing such election procedures shall be in accordance with the provisions of chapters 49 and 50.

11. When the board of commissioners decides to issue bonds subject to the election requirement, it shall adopt a resolution describing the area to be acquired, the nature of the existing improvements, the disposition to be made of the improvements, and a general description of any new buildings to be constructed.

12. The resolution shall set out the limit of the cost of the project, including the cost of acquiring and preparing the site, determine the period of usefulness and fix the amount of revenue bonds to be issued, the date or dates of maturity, the dates on which interest is payable, the sinking fund provisions, and all other details in connection with the bonds. The board shall determine and fix the rate of interest of any revenue bonds issued, in a resolution adopted by the board prior to the issuance. The resolution, trust agreement, or other contract entered into with the bondholders may contain covenants and restrictions concerning the issuance of additional revenue bonds as necessary or advisable for the assurance of the payment of the bonds authorized.

13. Bonds shall be issued in the name of the authority and are declared to have all the qualities and incidents of negotiable instruments under the laws of this state.

14. Bonds issued under this section may be issued as serial or term bonds, shall be of such denomination or denominations and form, including interest coupons to be attached, shall be payable at

such place or places and bear such date as the board of commissioners fix by the resolution authorizing the bonds, shall mature within a period not to exceed fifty years, and may be redeemable prior to maturity with or without premium, at the option of the board of commissioners, upon terms and conditions the board shall fix by the resolution authorizing the issuance of bonds. The board of commissioners may provide for the registration of bonds in the name of the owner as to the principal alone or as to both principal and interest upon terms and conditions the board determines. All bonds issued by an authority shall be sold at a price so that the interest cost to the commission of the proceeds of the bonds shall not exceed that permitted by chapter 74A, payable semi-annually, computed to maturity, and shall be sold in the manner and at the time the board of commissioners determines.

15. Bonds issued by an authority, and the interest thereon, shall be payable solely from the revenues derived from the operation, management, or use of the buildings acquired or to be acquired by the authority, which revenues shall include payments received under any leases or other contracts for the use of the buildings. Bonds shall recite that the principal and interest thereon are payable only from the revenues pledged, and shall state on their face that they are not an indebtedness of the authority or a claim against the property of the authority.

16. Bonds shall be executed in the name of the commission by the chairperson of the board of commissioners or by another officer of the commission as the board, by resolution, may direct, and be attested by the secretary, or by another officer of the commission as the board, by resolution, may direct, and shall be sealed with the commission's corporate seal. In case any officer whose signature appears on the bonds or coupons shall cease to be such officer before delivery of the bonds, the officer's signature shall be valid and sufficient for all purposes, the same as if the officer had remained in office until delivery.

17. In its discretion, the authority may issue refunding bonds to refund its bonds prior to their maturity, refund its outstanding matured bonds, refund matured coupons evidencing interest upon its outstanding bonds, refund interest at the coupon rate that has accrued upon its outstanding matured bonds, and refund its bonds which by their terms are subject to call or redemption before maturity. All bonds redeemed or purchased shall be canceled.

18. To secure the payment of revenue bonds and for the purpose of setting forth the covenants and undertakings of the authority in connection with the issuance of revenue bonds and the issuance of any additional revenue bonds payable from such revenue income to be derived from the operation, management, or use of the buildings acquired or to be acquired by the authority, the authority may execute and deliver a trust agreement except that no lien upon any physical property of the authority shall be created.

19. The resolution shall provide for the creation of a sinking fund account into which shall be payable

from the revenues of the project, from month to month as such revenues are collected, the sums in excess of the cost of maintenance and operation of the project and the cost of administration of the authority, sufficient to comply with the covenants of the bond resolution and sufficient to pay the accruing interest and retire the bonds at maturity. The board of commissioners, in a resolution, may provide for other accounts as necessary for the sale of the bonds. Moneys in the accounts shall be applied in the manner provided by the resolution, the trust agreement, or other contract with the bondholders.

20. No such bonds shall constitute a debt of the authority or of any public body within the meaning of any statutory or constitutional limitation as to debt.

21. From and after the issuance of bonds the board of commissioners shall establish and fix rates, rentals, fees, and charges for the use of any and all buildings or space owned and operated by the authority, sufficient at all times to pay maintenance and operation costs and to pay the accruing interest and retire the bonds at maturity and to make all payments to all accounts created by any bond resolution and to comply with all covenants of any bond resolution.

22. When an incorporating unit enters into a lease with the authority, the governing body of the incorporating unit shall provide by ordinance or resolution for the levy and collection of a direct annual tax sufficient to pay the annual rent payable under the lease as and when it becomes due and payable. The tax shall be levied and collected in like manner with the other taxes of the incorporating unit and shall be in addition to all other taxes authorized to be levied by that incorporating unit. This tax shall not be included within and shall be in addition to any statu-

tory limitation of rate or amount for that incorporating unit. The fund realized from the tax levy shall be set aside for the payment of the annual rent and shall not be disbursed for any other purpose until the annual rental has been paid in full.

23. All leases, contracts, deeds of conveyance, bonds, or other instruments in writing on behalf of the authority, shall be executed in the name of the authority by the chairperson and secretary of the authority, or by other officers as the board of commissioners, by resolution, directs, and the seal of the authority shall be affixed.

24. All property owned by any authority shall be exempt from taxation by the state or any taxing unit of the state. However, any interest derived from bonds issued by the authority shall be subject to taxation.

25. When all bonds issued by an authority have been retired, the authority may convey the title to the property owned by the authority to the incorporating units in accordance with the provisions therefor contained in the articles of incorporation, or, if none, in accordance with any agreement adopted by the respective governing bodies of the incorporating units, and the authority. The proposition of whether a conveyance shall be made shall be submitted to the legal voters of the city and county, utilizing the election procedures provided for bond issues, and an affirmative vote equal to at least a majority of the total votes cast on the proposition shall be required to authorize the conveyance. If the proposition does not carry, the authority shall continue to operate, maintain, and manage the building under a lease arrangement with the incorporating units.

95 Acts, ch 67, §53
Terminology change applied

CHAPTER 347

COUNTY HOSPITALS

347.7 Tax levies.

If a county hospital is established, the board of supervisors, at the time of levying ordinary taxes, shall levy a tax at the rate voted not to exceed fifty-four cents per thousand dollars of assessed value in any one year for the erection and equipment of the hospital, and also a tax not to exceed twenty-seven cents per thousand dollars of value for the improvement, maintenance, and replacements of the hospital, as certified by the board of hospital trustees. However, in counties having a population of two hundred twenty-five thousand or over, the levy for taxes payable in the fiscal year beginning July 1, 1996, and for subsequent fiscal years, for improvements and maintenance of the hospital shall not exceed one dollar and seventy-five cents per thousand dollars of assessed value in any one year. The

proceeds of the taxes constitute the county public hospital fund and the fund is subject to review by the board of supervisors in counties over two hundred twenty-five thousand. However, the board of trustees of a county hospital, where funds are available in the county public hospital fund of the county which are unappropriated, may use the unappropriated funds for erecting and equipping hospital buildings and additions thereto without authority from the voters of the county.

No levy shall be made for the improvement, maintenance, or replacements of the hospital until the hospital has been constructed, staffed, and receiving patients. If revenue bonds are issued and outstanding under section 331.461, subsection 2, paragraph "d", the board may levy a tax to pay operating and maintenance expenses in lieu of the authority oth-

erwise contained in this section not to exceed twenty-seven cents per thousand dollars of assessed value or not to exceed one dollar and twenty-one and one-half cents per thousand dollars of assessed value for improvements and maintenance of the hospital in counties having a population of two hundred twenty-five thousand or over.

In addition to levies otherwise authorized by this section, the board of supervisors may levy a tax at the rate, not to exceed twenty-seven cents per thousand dollars of assessed value, necessary to raise the amount budgeted by the board of hospital trustees for support of ambulance service as authorized in section 347.14, subsection 14.

The tax levy authorized by this section for operation and maintenance of the hospital may be available in whole or in part to any county with or without a county hospital organized under this chapter, to be used to enhance rural health services in the county. However, the tax levied may be expended for enhancement of rural health care services only following a local planning process. The Iowa department of public health shall establish guidelines to be followed by counties in implementing the local planning process which shall require legal notice, public hearings, and a referendum in accordance with this section and section 347.30 prior to the authorization of any new levy or a change in the use of a levy. Enhancement of rural health services for which the tax levy pursuant to this section may be used includes but is not limited to emergency medical services, health care services shared with other hospitals, rural health clinics, and support for rural health care practitioners and public health services. When alternative use of funds from the tax levy authorized by this section is proposed in a county with a county hospital organized under this chapter, use of the funds shall be agreed upon by the elected board of trustees of the county hospital. When alternative use of funds from the tax levy authorized by this section is proposed in a county without a county hospital organized under this chapter, use of the funds shall be agreed upon by the board of supervisors and any publicly elected hospital board of trustees within the county prior to submission of the question to the voters. Moneys raised from a tax levied in accordance with this paragraph shall be designated and administered by the board of supervisors in a manner consistent with the purposes of the levy.

95 Acts, ch 159, §1

1995 amendments to unnumbered paragraph 1 apply to the fiscal year beginning July 1, 1996, and subsequent fiscal years; 95 Acts, ch 159, §2
Unnumbered paragraph 1 amended

347.16 Treatment in county hospital — terms.

1. Any resident of a county in this state who is sick or injured shall be entitled to care and treatment in any public hospital established and maintained by that county under this chapter, so long as that person observes the rules of conduct prescribed by the board of hospital trustees. Each patient admitted under this subsection, or the person legally liable for that patient's support, shall pay to the board of hospital trustees reasonable compensation for that patient's care and treatment according to the rules established by the board, unless subsection 2 is applicable.

2. Free care and treatment shall be furnished in a county public hospital to any sick or injured person who fulfills the residency requirements under section 47.4, subsection 1, paragraph "d", Code 1993, in the county maintaining the hospital, and who is indigent. The board of hospital trustees shall determine whether a person is indigent and entitled to free care under this subsection, or may delegate that determination to the general assistance director or the office of the department of human services in that county, subject to guidelines the board may adopt in conformity with applicable statutes.

3. Care and treatment may be furnished in a county public hospital to any sick or injured person who has legal settlement outside the county which maintains the hospital, subject to such policies and rules as the board of hospital trustees may adopt. If care and treatment is provided under this subsection to a person who is indigent, the county in which that person has legal settlement shall pay to the board of hospital trustees the fair and reasonable cost of the care and treatment provided by the county public hospital unless the cost of the indigent person's care and treatment is otherwise provided for. If care and treatment is provided to an indigent person under this subsection, the county public hospital furnishing the care and treatment shall immediately notify, by regular mail, the auditor of the county of legal settlement of the indigent person of the provision of care and treatment to the indigent person.

4. A county public hospital may, but shall not be required to, provide care and treatment for persons afflicted with tuberculosis. If treatment for tuberculosis is provided by a county public hospital, the provisions of this section shall be applicable to persons admitted to that hospital for such treatment.

95 Acts, ch 49, §10; 95 Acts, ch 119, §3

Applicability of 1995 amendment to subsection 3; 95 Acts, ch 119, §5
Subsections 2 and 3 amended

CHAPTER 356

JAILS AND MUNICIPAL HOLDING FACILITIES

356.36 Jail standards.

The Iowa department of corrections, in consultation with the Iowa state sheriff's association, the

Iowa association of chiefs of police and peace officers, the Iowa league of cities, and the Iowa board of supervisors association, shall draw up minimum

standards for the regulation of jails, alternative jails, facilities established pursuant to chapter 356A and municipal holding facilities. When completed by the department, the standards shall be adopted as rules pursuant to chapter 17A.

The sole remedy for violation of a rule adopted pursuant to this section, is by a proceeding for compliance initiated by request to the Iowa department

of corrections. A violation of a rule does not permit any civil action to recover damages against the state of Iowa, its departments, agents, or employees or any county, its agents or employees, or any city, its agents or employees.

95 Acts, ch 3, §3
Unnumbered paragraph 1 amended

CHAPTER 357A

RURAL WATER DISTRICTS

357A.2 Petition — deposit — limitation.

A petition may at any time be filed with the auditor requesting the supervisors to incorporate and organize a district encompassing an area, not then included in any other district, in a county or in two or more adjacent counties for the purpose of providing an adequate supply of water for residents of the area who are not served by the water mains of any city water system.

There shall be filed with the petition a bond with sureties approved by the auditor, or a certified check, credit union certified share draft or cash in an amount sufficient for the payment of all costs and expenses incurred in the proceedings if the district is not finally established.

The petition shall be signed by the owners of at least thirty percent of all real property lying within the outside perimeter of the area designated for inclusion in the proposed district, and shall state:

1. The location of the area, describing such area to be served or specifying the area by an attached map.

2. The reasons a district is needed.

3. A new water service plan describing the cost feasibility and estimated construction schedules.

Water services, other than water services provided as of April 1, 1987, shall not be provided within two miles of the limits of a city by a rural water district incorporated under this chapter or chapter 504A except as provided in this section.

A rural water district incorporated under this chapter or chapter 504A may give notice of intent to provide water service to a new area within two miles of a city by submitting a water plan to the city. The plan is only required to indicate the area within two miles of the city which the rural water district intends to serve. If the city fails to respond to the rural water district's plan within ninety days of receipt of the plan, the rural water district may provide service in the area designated in the plan. The city may inform the rural water district within ninety days of receipt of the plan that the city requires additional time or information to study the question of providing water service outside the limits of the city. If additional time or information is required, the city shall respond to the rural water district's plan within one hundred eighty days of receipt of the plan. In re-

sponding to the plan, the city may waive its right to provide water service within the areas designated for service by the rural water district, or the city may reserve the right to provide water service in some or all of the areas which the rural water district intends to serve. If the city reserves the right to provide water service within some or all of the areas which the rural water district intends to serve, the city shall provide service within four years of receipt of the plan. This section does not preclude a city from providing water service in an area which is annexed by the city.

95 Acts, ch 77, §2
Unnumbered paragraph 3 amended

357A.8 Bylaws submitted at special meeting.

Within thirty days after election of the original board, proposed bylaws shall be submitted for adoption at a special meeting of members of the district, written notice of which shall be mailed to each member. Members present at the special meeting may adopt or amend any of the proposed bylaws, and may propose and adopt alternative or additional bylaws. The bylaws may subsequently be amended at any annual or special meeting of the participating members of the district. However, the bylaws of each district shall provide:

1. For an annual meeting of participating members between January 1 and May 1 of each year following the year of incorporation of the district, and for the mailing of written notice of the time and place of each annual meeting to each participating member and publication of the notice in a newspaper of general circulation in the district not less than ten nor more than thirty days prior to each meeting.

2. That each participating member of the district shall be entitled to a single vote at all annual and special meetings of the district, regardless of the number of benefit units to which the member has subscribed.

95 Acts, ch 77, §3
Subsection 1 amended

357A.11 Board's powers and duties.

The board shall be the governing body of the district, and shall:

1. Adopt rules, regulations, and rate schedules in conformity with the provisions of this Act and the

bylaws of the district as necessary for the conduct of the business of the district.

2. Maintain at its office a record of the district's proceedings, rules and regulations, and any decisions and orders made pursuant to the provisions of this chapter, and furnish copies thereof to the supervisors or the council upon request.

3. Employ, appoint, or retain attorneys, engineers, other professional and technical employees, and other personnel as necessary, and require and approve bonds of district employees. The board may enter into agreements pursuant to chapter 28E to provide professional or technical services under this subsection to other water districts, nonprofit corporations, or related associations.

4. Prior to each annual meeting of participating members:

a. Prepare an estimated budget for the coming year, and adjust water rates if necessary in order to produce the revenue required to fund the estimated budget, and make a report thereon at the annual meeting.

b. Have an audit made of the district's records and accounts, and make copies of the audit report available to all participating members attending the annual meeting and to any other participating member who so requests.

5. Have authority to acquire by gift, lease, purchase, or grant any property, real or personal, in fee or a lesser interest needed to achieve the purposes for which the district was incorporated, to acquire easements for water lines and reservoirs by condemnation proceedings, and to sell and convey property owned, but no longer needed, by the district. Condemnation proceedings shall not apply to existing wells, ponds or reservoirs.

6. Have authority to construct, operate, maintain, repair, and when necessary to enlarge or extend, such ponds, reservoirs, pipelines, wells, check dams, pumping installations, or other facilities for the storage, transportation, or utilization of water, and such appurtenant structures and equipment, as may be necessary or convenient to carry out the purposes for which the district was incorporated. A district may purchase its water supply from any source.

7. Have power to borrow from, co-operate with and enter into agreements as deemed necessary with any agency of the federal government, this state, or a county of this state, and to accept financial or other aid from any agency of the federal government. To evidence any indebtedness the obligations may be one or more bonds or notes and the obligations may be sold at private sale.

8. Have power to finance all or part of the cost of the construction or purchase of any project necessary to carry out the purposes for which the district is incorporated, or to refinance all or part of the original cost of any such project, and to evidence that financing by issuance of revenue bonds or notes which shall mature in a period not to exceed forty years from date of issuance, shall bear interest, or combined interest and insurance charges, at a rate not to exceed that

permitted by chapter 74A, shall be payable only from revenue derived from sale of water by the district, and shall never become or be construed to be a debt against the state of Iowa or any of its political subdivisions other than the district issuing the bonds.

9. Finance all or part of the cost of the construction or purchase of a project necessary to carry out the purposes for which the district is incorporated or to refinance all or part of the original cost of that project, including, but not limited to, obligations originated by the district as a nonprofit corporation under chapter 504A and assumed by the district reorganized under this chapter. Financing or refinancing carried out under this subsection shall be in accordance with the terms and procedures set forth in the applicable provisions of sections 384.83 through 384.88, 384.92, and 384.93. References in these sections to a city shall be applicable to a rural water district operating under this chapter, and references in that division to a city council shall be applicable to the board of directors of a rural water district. This subsection shall not create a lien against the property of a person who is not a rural water subscriber.

10. Have power to join the Iowa association of rural water districts, and pay out of funds available to the board, reasonable dues to the association. The financial condition and transactions of the Iowa association of rural water districts must be audited in the same manner as rural water districts.

11. Have authority to execute an agreement with a governmental entity, including a county, city, or another district, for purposes of managing or administering the governmental entity's works, facilities, or waterways which are useful for the collection, disposal, or treatment of wastewater or sewage.

12. Place all funds in investments to the extent practicable and may invest the funds jointly with one or more counties, judicial district departments of correctional services, cities, or city utilities pursuant to a joint investment agreement. All investments of funds shall be subject to sections 12B.10 and 12B.10A and other applicable law.

This chapter and chapter 384, as it applies to rural water districts, shall not be construed to mean that the real property of any rural water subscriber shall be used as security for any debts of a rural water district. However, the failure to pay water rates or charges by a subscriber may result in a lien being attached against the premises served upon certification to the county treasurer that the rate or charges are due.

95 Acts, ch 77, §4
NEW subsection 12

357A.20 Alternate operation by nonprofit corporation.

A nonprofit corporation incorporated under chapter 504A for the specific purpose of operating a rural water system may petition the supervisors for incorporation of a district, in the manner provided by section 357A.2. The signatures of the corporation's

officers on the petition and a resolution adopted by the corporation's board of directors approving the petition shall suffice in lieu of signatures of owners of thirty percent of the real property in the proposed district, if the corporation presents evidence satisfactory to the supervisors that a sufficient number of members of the proposed district will subscribe to benefit units to make its operation feasible. The procedure for hearing and determination of disposition of the petition shall be as provided by this chapter.

In any district incorporated upon the petition of a nonprofit corporation, the following procedures shall apply:

1. After final approval of the petition by a board of supervisors, the secretary of the corporation shall file a notice with the secretary of state dissolving the nonprofit corporation in accordance with chapter 504A.

2. Upon filing of the notice, the nonprofit corporation shall cease to exist as a chapter 504A entity

and all assets and liabilities of the nonprofit corporation become the assets and liabilities of the newly organized district without a need for any further meetings, voting, notice to creditors, or other actions by the members or board.

3. The officers and board of directors of the corporation shall be the officers and board of the district.

4. The applicable laws of the state and the articles of incorporation and bylaws of the corporation shall control the initial size and initial term of office of such officers and board, in lieu of sections 357A.7, 357A.9, and 357A.10.

5. The district shall bring its operation and structure in compliance with sections 357A.7 to 357A.10 at the first annual meeting of the participating members and board of directors.

95 Acts, ch 77, §5
Unnumbered paragraph 1 amended

CHAPTER 357G

CITY EMERGENCY MEDICAL SERVICES DISTRICTS

357G.4 Time of hearing.

The public hearing required in section 357G.2 shall be held within thirty days of the presentation of the petition. Notice of hearing shall be given by publication in two successive issues of any newspaper of general circulation within the district. The last publication shall be not less than one week before the proposed hearing.

95 Acts, ch 67, §30
Section amended

357G.8 Election on proposed levy and candidates for trustees.

When a preliminary plat has been approved by the council, an election shall be held within the district within sixty days to approve or disapprove the levy of a tax of not more than one dollar per thousand dollars of assessed value on all the taxable property within the district and to choose candidates for the offices of trustees of the district. The ballot shall set out the

reason for the tax and the amount needed. The tax shall be set to raise only the amount needed. Notice of the election, including the time and place of holding the election, shall be given as provided in section 357G.4. The vote shall be by ballot which shall state clearly the proposition to be voted upon and any registered voter residing within the district at the time of the election may vote. It is not mandatory for the county commissioner of elections to conduct elections held pursuant to this chapter, but the elections shall be conducted in accordance with chapter 49 where not in conflict with this chapter. Judges shall be appointed to serve without pay by the council from among the registered voters of the district to be in charge of the election. The proposition is approved if sixty percent of those voting on the proposition vote in favor of it.

95 Acts, ch 67, §53
Terminology change applied

CHAPTER 358

SANITARY DISTRICTS

358.2 Petition — deposit.

Any twenty-five or more eligible electors resident within the limits of any proposed sanitary district may file a petition in the office of the county auditor of the county in which the proposed sanitary district,

or the major portion thereof, is located, requesting that there be submitted to the registered voters of such proposed district the question whether the territory within the boundaries of such proposed district shall be organized as a sanitary district under this

chapter. Such petition shall be addressed to the board of supervisors of the county wherein it is filed and shall set forth:

1. An intelligible description of the boundaries of the territory to be embraced in such district.
2. The name of such proposed sanitary district.
3. That the public health, comfort, convenience or welfare will be promoted by the establishment of such sanitary district.
4. The signatures of the petitioners.

No territory shall be included within more than one sanitary district organized under this chapter, and if any proposed sanitary district shall fail to receive a majority of votes cast at any election thereon as hereinafter provided, no petition shall be filed for establishment of such a sanitary district within one year from the date of such previous election.

There shall be filed with the petition a bond with sureties approved by the auditor, or a certified check, credit union certified share draft or cash in an amount sufficient for the payment of all costs and expenses incurred in the proceedings if the district is not finally established.

No preliminary expense shall be incurred before the establishment of the proposed sanitary district by the board in excess of the amount of bond filed by the petitioners. In case it is necessary to incur any expense in addition to the amount of the bond, the board of supervisors shall require the filing of an additional security until the additional bond is filed in sufficient amount to cover the expense.

95 Acts, ch 67, §53
Terminology change applied

358.5 Hearing of petition and order.

The board of supervisors to whom the petition is addressed shall preside at the hearing provided for in section 358.4 and shall continue the hearing in session, with adjournments from day to day, if necessary, until completed, without being required to give any further notice of the hearing. Proof of the residences and qualifications of the petitioners as eligible elec-

tors shall be made by affidavit or otherwise as the board may direct. The board may consider the boundaries of a proposed sanitary district, whether they shall be as described in the petition or otherwise, and for that purpose may alter and amend the petition and limit or change the boundaries of the proposed district as stated in the petition. The board shall adjust the boundaries of a proposed district as needed to exclude land that has no reasonable likelihood of benefit from inclusion in the proposed district. The boundaries of a proposed district shall not be changed to incorporate property not included in the original petition and published notice until the owner of the property is given notice of inclusion as on the original hearing. All persons in the proposed district shall have an opportunity to be heard regarding the location and boundaries of the proposed district and to make suggestions regarding the location and boundaries, and the board of supervisors, after hearing the statements, evidence and suggestions made and offered at the hearing, shall enter an order fixing and determining the limits and boundaries of the proposed district and directing that an election be held for the purpose of submitting to the registered voters owning land within the boundaries of the proposed district the question of organization and establishment of the proposed sanitary district as determined by said board of supervisors. The order shall fix a date for the election not more than sixty days after the date of the order.

However, a majority of the landowners, owning in the aggregate more than seventy percent of the total land in the proposed district, may file a written remonstrance against the proposed district at or before the time fixed for the hearing on the proposed district with the county auditor. If the remonstrance is filed, the board of supervisors shall discontinue all further proceedings on the proposed district and charge the costs incurred to date relating to the establishment of the proposed district.

95 Acts, ch 67, §53
Terminology change applied

CHAPTER 358C

REAL ESTATE IMPROVEMENT DISTRICTS

358C.1 Legislative findings — purpose — definitions.

1. The general assembly finds and declares as follows:

a. The economic health and development of Iowa communities is tied to opportunities for jobs in and near those communities and the availability of jobs is in part tied to the availability of affordable, decent housing in those communities.

b. A need exists for a program to assist developers and communities in increasing the availability of housing in Iowa communities.

c. A shortage of opportunities and means for developing local housing exists. It is in the best interest of the state and its citizens for infrastructure development which will lower the costs of developing housing.

d. The expansion of local housing is dependent upon the cost of providing the basic infrastructure necessary for a housing development. Providing this infrastructure is a public purpose for which the state may encourage the formation of real estate improvement districts for the purpose of providing water, sewer, roads, and other infrastructure.

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

a. "Board" means the board of trustees of a real estate improvement district.

b. "Construction" includes materials, labor, acts, operations, and services necessary to complete a public improvement.

c. "Cost" of a public improvement includes the cost of engineering, preliminary reports, property valuations, estimates, plans, specifications, notices, legal services, acquisition of land, consequential damages, easements, rights-of-way, construction, repair, supervision, inspection, testing, notices and publication, interest during construction and for not more than six months thereafter, and printing and sale of bonds.

d. "District" means a real estate improvement district as created in this chapter, in a county designated as a pilot county under section 358C.2.

e. "Public improvement" includes the principal structures, works, component parts, and accessories of the facilities or systems specified in section 358C.4.

f. "Repair" includes materials, labor, acts, operations, and services necessary for the reconstruction, reconstruction by widening, or resurfacing of a public improvement.

95 Acts, ch 200, §1
NEW section

358C.2 Pilot program established.

The establishment of real estate improvement districts under this chapter shall be limited to six pilot counties, which shall be determined by the director of the Iowa finance authority so as to add to the diversity of the pilot program. A real estate improvement district shall not be established in a pilot county after two years from July 1, 1995.

95 Acts, ch 200, §2
NEW section

358C.3 Real estate improvement district created.

1. A majority of the owners having an interest in the real property within the limits of a proposed district may file a petition in the office of county auditor of the county in which the proposed district or major part of the proposed district is located, requesting that the question be submitted to the registered voters of the proposed district of whether the territory within the boundaries of the proposed district shall be organized as a real estate improvement district as provided in this chapter.

2. All of the owners having an interest in the real property within the limits of a proposed district may file a petition in the office of county auditor of the county in which the proposed district or a major part of the proposed district is located, requesting that the proposed district be organized as a real estate improvement district as provided in this chapter.

3. Only areas of contiguous territory may be incorporated within a district. The petition shall be addressed to the board of supervisors if all or part of

the proposed district includes territory located outside the boundaries of a city, shall be submitted to the board of supervisors before it is filed with the county auditor, and shall set forth the following information:

a. The name of the district.

b. The district shall have perpetual existence.

c. The boundaries of the district.

d. The names and addresses of the owners of land in the proposed district.

e. The description of the tracts of land situated in the proposed district owned by those persons who may organize the district.

f. The names and descriptions of the real estate owned by the persons who do not join in the organization of the district, but who will be benefited by the district.

g. A listing of one or more of the district improvements specified in section 358C.4 which will be carried out by the district.

h. The owners of real estate in the proposed district that are unknown may also be set out in the petition as being unknown.

i. That the establishment of the proposed district will be conducive to the public health, comfort, convenience, and welfare.

4. The petition shall also state that the owners of real estate who are forming the proposed district are willing to pay the taxes which may be levied against all of the property in the proposed district and special assessments against the real property benefited which may be assessed against them to pay the costs necessary to carry out the purposes of the district.

5. The petition shall also state that the owners of real estate who are forming the proposed district waive any objections to a subsequent annexation by a city.

6. The petition shall propose the names of three or more trustees who shall be owners of real estate in the proposed district or the designees of owners of property in the proposed district, to serve as a board of trustees until their successors are elected and qualified if the district is organized. The board of trustees shall only carry out those purposes which are authorized in this chapter and listed in the petition.

7. If the petition requests that the district be organized without an election, the petition shall contain the signatures of all known owners of property within the proposed district.

8. The petition shall be submitted to and approved by the city council before it is filed with the county auditor as provided in subsection 1. If a petition includes a proposed district located solely within the boundaries of a city, the petition is not subject to action by the board of supervisors except for the purpose of selecting the initial trustees and setting the election date to finally organize the district or the date to organize the district if no election is required.

9. A proposed district shall be created only from parcels of land within the boundaries of a city, on parcels of land, all or the major part of which is within

two miles of the boundaries of a city, or on parcels of land from both locations.

95 Acts, ch 200, §3
NEW section

358C.4 Public improvements authorized.

1. A district may acquire, construct, reconstruct, install, maintain, and repair any of the public improvements listed in subsection 2.

2. A public improvement includes the principal structures, works, component parts, and accessories of any of the following:

- a. Underground gas, water, heating, sewer, telecommunications, and electrical connections located in streets for private property.
- b. Sanitary, storm, and combined sewers.
- c. Waterworks, water mains, and extensions.
- d. Emergency warning systems.
- e. Pedestrian underpasses or overpasses.
- f. Drainage conduits, dikes, and levees for flood protection.
- g. Public waterways, docks, and wharfs.
- h. Public parks, playgrounds, and recreational facilities.
- i. Street grading, paving, graveling, macadamizing, curbing, guttering, and surfacing with oil and gravel or chloride.
- j. Street lighting fixtures, connections, and facilities.
- k. Sewage pumping stations.
- l. Traffic control devices, fixtures, connections, and facilities.
- m. Public roads, streets, and alleys.

95 Acts, ch 200, §4
NEW section

358C.5 Date and notice of hearing.

1. The board of supervisors to which the petition is addressed, at its next meeting, shall set the time and place for a hearing on the petition. The board shall direct the county auditor in whose office the petition is filed to cause notice to be given to all persons whom it may concern, without naming them, of the pendency and content of the petition, by publication of a notice as provided in section 331.305. Proof of giving the notice shall be made by affidavit of the publisher and the proof shall be on file with the county auditor at the time the hearing begins. The notice of hearing shall be directed to all persons it may concern, and shall state:

- a. That a petition has been filed with the county auditor of the county, naming it, for establishment of a proposed district, and the name of the proposed district.
- b. An intelligible description of the boundaries of the territory to be embraced in the district.
- c. The date, hour, and the place where the petition will be brought for hearing before the board of supervisors of the named county.
- d. That the board of supervisors will fix and determine the boundaries of the proposed district as described in the petition or otherwise, and for that

purpose may alter and amend the petition. At the hearing all interested persons shall have an opportunity to be heard on the location and boundaries of the proposed district and to make suggestions regarding the location and boundaries.

e. That, in the case of a petition under section 358C.3, subsection 2, a property owner who was not known and who did not sign the petition and who does not object to the proposed district in writing prior to the hearing or in person at the hearing shall waive all objections to the organization of the proposed district.

2. For a district which does not include land within a city, copy of the notice shall also be sent by mail to each owner, without naming them, of each tract of land or lot within the proposed district as shown by the transfer books of the auditor's office. The mailings shall be to the last known mailing address unless there is on file an affidavit of the auditor or of a person designated by the board to make the necessary investigation, stating that a mailing address is not known and that diligent inquiry has been made to ascertain it. The copy of notice shall be mailed no less than twenty days before the day set for hearing and proof of service shall be by affidavit of the auditor. The proofs of service required by this subsection shall be on file at the time the hearing begins.

3. In lieu of the mailing to the last known address a person owning land affected by a proposed district may file with the county auditor an instrument in writing designating the address for the mailing. This designation when filed is effective for five years and applies to all proceedings under this chapter. The person making the designation may change the address in the same manner as the original designation is made.

4. In lieu of publication, personal service of the notice may be made upon an owner of land in the proposed district in the manner and for the time required for service of original notices in the district court. Proof of the service shall be on file with the auditor on the date of the hearing.

95 Acts, ch 200, §5
NEW section

358C.6 Hearing of petition and order.

The board of supervisors to whom the petition is addressed shall preside at the hearing provided for in section 358C.5 and shall continue the hearing in session, with adjournments from day to day, if necessary, until completed, without being required to give any further notice of the hearing. Proof of the residences and qualifications of the petitioners as registered voters shall be made by affidavit or otherwise as the board may direct. The board may consider the boundaries of a proposed district, whether the boundaries are described in the petition or otherwise, and for that purpose may alter and amend the petition and limit or change the boundaries of the proposed district as stated in the petition. The board shall adjust the boundaries of a proposed district as needed to exclude land that has no reasonable like-

likelihood of benefit from inclusion in the proposed district. The boundaries of a proposed district shall not be changed to incorporate property not included in the original petition and published notice until the owner of the property is given notice of inclusion as on the original hearing. All persons in the proposed district shall have an opportunity to be heard regarding the location and boundaries of the proposed district and to make suggestions regarding the location and boundaries, and the board of supervisors, after hearing the statements, evidence, and suggestions made and offered at the hearing, shall approve or reject the petition. If the petition is approved, the board shall enter an order fixing and determining the limits and boundaries of the proposed district and whether or not all present and future property owners within the district have waived any objections to the annexation by a city if the district has issued obligations or bonds for public improvement and the city assumes those obligations, and, if the petition was requested under section 358C.3, subsection 1, directing that an election be held for the purpose of submitting to the registered voters owning land within the boundaries of the proposed district the question of organization and establishment of the proposed district as determined by the board of supervisors. The order shall fix a date for the election not more than sixty days after the date of the order. If the petition was requested under section 358C.3, subsection 2, the order shall fix a date for the organization of the district.

95 Acts, ch 200, §6
NEW section

358C.7 Notice of election.

In its order for the election the board of supervisors shall direct the county commissioner of elections of the county in which the petition is filed to cause notice of the election to be given at least thirty days before the date of election by publication of the notice as provided in section 331.305. The notice shall state the time and place of holding the election and the hours when the polls will open and close, the purpose of the election, with the name of the proposed district and a description of the boundaries of the proposed district, and shall set forth briefly the limits of each voting precinct and the location of the polling places. Proof of publication shall be made in the manner provided in section 358C.5 and filed with the county auditor.

95 Acts, ch 200, §7
NEW section

358C.8 Election.

1. Each registered voter resident within the proposed district shall have the right to cast a ballot at the election and a person shall not vote in any precinct but that of the person's residence. Ballots at the election shall be in substantially the following form, to wit:

For Real Estate Improvement District
Against Real Estate Improvement District

2. The board of supervisors shall cause a statement of the result of the election to be included in the records of the county auditor. If a majority of the votes cast upon the question of incorporation of the proposed district shall be in favor of the proposed district, the proposed district shall be deemed an organized real estate improvement district under this chapter and established as conducive to the public health, comfort, convenience, and welfare.

3. In the event the petition and order provide that any present or future owner of property within the district waives objection to annexation if the district has issued obligations or bonds for a public improvement and the annexing city assumes those obligations, the board of supervisors shall file a certified declaration of that provision and a legal description of all real estate in the district with the county recorder in each county in which the district is located.

95 Acts, ch 200, §8
NEW section

358C.9 Expenses and costs of election.

The election held pursuant to this chapter shall be conducted by the county commissioner of elections. All expenses incurred in carrying out the preceding sections of this chapter, and the costs of the election, as determined by the county commissioner of elections, shall be paid by those who will be benefited by the proposed district. If the district is not established, the expenses and costs shall be collected upon the bonds of the petitioners.

95 Acts, ch 200, §9
NEW section

358C.10 Selection of trustees — term of office.

1. The board of supervisors or city council which had jurisdiction of the proceedings for establishment of the district, together with the board of supervisors of any other county in which any part of the district is located, shall appoint three trustees from among those persons listed in the petition. The trustees shall serve an initial two-year term.

2. Vacancies in the office of trustee of a district shall be filled by the remaining members of the board for the period until a successor is chosen in the manner prescribed by this section or by section 69.12, whichever is applicable.

3. Successors to trustees shall be elected at a special meeting of the board of trustees called for that purpose. Upon its own motion, the board of trustees may, or upon petition of landowners owning more than fifty percent of the total land in the district, shall, call a special meeting of the residents of the district to elect successors to trustees of the board. Notice of the meeting shall be given at least ten days before the date of the meeting by publication of the notice in a newspaper of general circulation in the district. The notice shall state the date, times, and location of the meeting and that the meeting is called for the purpose of electing one or more trustees to the board.

95 Acts, ch 200, §10
NEW section

358C.11 Trustee's bond.

Each trustee, before entering upon the duties of office, shall execute a bond payable to the district, with security to be approved by the board of supervisors which had jurisdiction of the petition for establishment of the district, in such form and amount as the board of supervisors may determine, which bond shall be filed with the county auditor of the county.

95 Acts, ch 200, §11
NEW section

358C.12 Real estate improvement district to be a body corporate — eminent domain.

1. Each district organized under this chapter shall be a body corporate and politic, with the name and style under which it was organized, and by that name and style may sue and be sued, contract and be contracted with, acquire and hold real and personal property necessary for corporate purposes, adopt a corporate seal and alter the same at pleasure, and exercise all the powers conferred in this chapter.

2. All courts of this state shall take judicial notice of the existence of real estate improvement districts organized under this chapter.

3. A district shall not own or hold land in excess of ten acres unless the land is actually used for a public purpose within three years of its acquisition. A district which owns or holds land in excess of ten acres for more than three years without devoting it to a public purpose as provided in this chapter shall divest itself of the land by public auction to the highest bidder.

4. A district may acquire by purchase, condemnation, or gift, real or personal property, right-of-way, and easement within or without its corporate limits necessary for its corporate purposes specified in section 358C.4.

5. If the board of trustees of the district decide to make a public improvement pursuant to this chapter which requires that private property be taken or damaged, the board may exercise the power of eminent domain. The procedure to condemn property shall be exercised in the manner provided in chapter 6B.

6. A district shall comply with all city building and use codes for owner-occupied residential housing and shall comply with all city design and construction standards for the public improvements authorized in section 358C.4.

7. A district shall not incorporate as a city if all or the major part of the district is within two miles of the boundaries of a city at the time the district is approved.

8. The provisions of chapters 21 and 22 applicable to cities, counties, and school districts apply to the district. The records of the district are subject to audit pursuant to section 11.6.

95 Acts, ch 200, §12
NEW section

358C.13 Board of trustees — powers — prohibited actions.

1. The board of trustees is the corporate authority of the district and shall manage and control the

affairs and property of the district. A majority of the board of trustees shall constitute a quorum, but a smaller number may adjourn from day to day. The board of trustees shall elect a president, a clerk, and a treasurer from its membership.

2. The board of trustees may adopt the necessary ordinances, resolutions, and regulations for the proper management and conduct of the business of the board of trustees and the corporation and for carrying out the purposes for which the district is formed, including for the negotiation of short-term loans and the issuance of warrants.

3. If the board of trustees wishes to expand its authority to carry out public improvements in addition to the public improvements listed in the board's original petition as provided in section 358C.4, the board shall submit a petition to the board of supervisors specifying the additional public improvements to be included within the authority of the district and requesting that the board of supervisors order an election as provided in section 358C.7 to approve or disapprove the amendment. If the petition includes public improvements as specified in section 358C.4, the board of supervisors shall order the election to be conducted as otherwise provided in this chapter. If the amendment is approved, the original petition is amended to include the additional public improvements.

4. The board of trustees of a district shall not purchase and resell electric service or establish and operate a gasworks or electric light and power plant and system.

5. The board of trustees shall not require or grant a franchise under section 364.2, to any person pursuant to subsection 4.*

95 Acts, ch 200, §13
*Subsection 4 of §364.2 probably intended; corrective legislation is pending
NEW section

358C.14 Taxes — power to levy — tax sales.

1. The board of trustees of a real estate improvement district shall have the power by ordinance to levy annually for the purpose of paying the administrative costs of the district, or for the payment of deficiencies in special assessments, or for both, a tax upon property within the territorial limits of the district not exceeding fifty-four cents per thousand dollars of the adjusted taxable valuation of the property within the district for the preceding fiscal year.

2. All taxes thus levied by the board shall be certified by the clerk on or before March 1 to the county auditor of each county in which any of the property included within the territorial limits of the district is located, and shall be placed upon the tax list for the current fiscal year by the auditor. The county treasurer of more than one county shall collect all taxes so levied in the same manner as other taxes, and when delinquent the taxes shall draw the same interest. All taxes levied and collected shall be paid over by the officer collecting the taxes to the treasurer of the district.

3. Sales for delinquent taxes owing to the district shall be made at the same time and in the same

manner as the sales are made for other taxes, and all provisions of the law of this state relating to the sale of property for delinquent taxes shall be applicable, so far as may be, to the sales.

95 Acts, ch 200, §14
NEW section

358C.15 Rentals and charges.

1. A board of trustees may by ordinance establish equitable rates, charges, or rentals for the utilities and services furnished by the district to be paid to the district by every person, firm, or corporation whose premises are served by a connection to the utilities and services directly or indirectly. The rates, charges, or rentals, as near as may be in the judgment of the board of trustees, shall be equitable and in proportion to the services rendered and the cost of the services, and taking into consideration in the case of the premises the quantity of sewage or water produced or used and the concentration, strength, and pollution qualities of the sewage. The board of trustees may change the rates, charges, or rentals as it may deem advisable, and by ordinance may provide for collection. The board may contract with any municipality within the district, whereby the municipality may collect or assist in collecting any of the rates, charges, or rentals, whether in conjunction with water rentals or otherwise, and the municipality may undertake the collection and render the service. The rates, charges, or rentals, if not paid when due, shall constitute a lien upon the real property served by a connection. The lien shall have equal precedence with ordinary taxes, may be certified to the county treasurer and collected in the same manner as taxes, and is not divested by a judicial sale.

2. Sewer rentals, charges, or rates may supplant or replace, in whole or in part, any monetary levy of taxes which may be, or have been, authorized by the board of trustees for any of the following purposes:

a. To meet interest and principal payments on bonds legally authorized for the financing of sanitary utilities in any manner.

b. To pay costs of the construction, maintenance, or repair of the facilities or utilities, including payments to be made under any contract between municipalities for either the joint use of water or sewage facilities, or for the use by one municipality of all or a part of the water or sewer system of another municipality.

95 Acts, ch 200, §15
NEW section

358C.16 Debt limit — borrowing — bonds — purposes.

1. A district may borrow money for its corporate purposes, but shall not become indebted in any manner or for any purpose to an amount in the aggregate exceeding its constitutional debt limit of five percent on the value of the taxable property within the district, to be ascertained by the last state and county tax lists previous to the incurring of the indebtedness. Indebtedness within this constitutional limit

shall not include the indebtedness of any other municipal corporation located wholly or partly within the boundaries of the district, special assessment bonds or obligations authorized under section 358C.17.

2. Subject only to this debt limitation, a district shall have the same powers to issue bonds, including both general obligation and revenue bonds, including the power to enter into short-term loans and issue warrants, which cities have under the laws of this state. In the application of the laws to this chapter, the words used in the laws referring to municipal corporations or to cities shall be held to include real estate improvement districts organized under this chapter; the words “council” or “city council” shall be held to include the board of trustees of a district; the words “mayor” and “clerk” shall be held to include the president and clerk of a board of trustees; and like construction shall be given to any other words in the laws where required to permit the exercise of the powers by real estate improvement districts.

3. All bonds issued shall be signed by the president of the board of trustees and attested by the clerk, with the seal of the district, if any, affixed, and interest coupons attached to the bonds shall be attested by the signature of the clerk.

4. The proceeds of any bond issue made under this section shall be used only for the public improvements specified in section 358C.4. Proceeds from the bond issue may also be used for the payment of special assessment deficiencies. The bonds shall be payable in not more than forty annual installments and with interest at a rate not exceeding that permitted by chapter 74A, and shall be made payable at the place and be of the form as the board of trustees shall by resolution designate. A district issuing bonds as authorized in this section is granted authority to pledge the future avails of a tax levy to the payment of the principal and interest of the bonds after the same come due, and the power to impose and certify the levy is granted to the trustees of real estate improvement districts organized under this chapter.

95 Acts, ch 200, §16
NEW section

358C.17 Special assessments.

1. The board of trustees of a real estate improvement district may provide for payment of all or any portion of the costs of a public improvement specified in section 358C.4, by assessing all, or any portion of, the costs on adjacent property according to the benefits derived. For the purposes of this chapter, the board of trustees may define “adjacent property” as all that included within a designated benefited district to be fixed by the board, which may be all of the property located within the real estate improvement district or any lesser portion of that property. It is not a valid objection to a special assessment that the improvement for which the assessment is levied is outside the limits of the district, but a special assessment shall not be made upon property situated outside of the district. Special assessments pursuant

to this section shall be in proportion to the special benefits conferred upon the property, and not in excess of the benefits. The value of a property is the present fair market value of the property with the proposed public improvements completed. Payment of installments of a special assessment against property shall be made in the same manner and under the same procedures as provided in chapter 384 for special assessments by cities. Notwithstanding the provisions of section 384.62, the combined assessments against any lot for public improvements included in the petition creating the housing development district or as authorized in section 358C.4 shall not exceed the valuation of that lot as established by section 384.46.

2. The assessments may be made to extend over a period not to exceed fifteen years, payable in as nearly equal annual installments as practicable. A majority vote of the board of trustees is requisite and sufficient for any action required by the board of trustees under this section.

3. Subject to the limitations otherwise stated in this section, a district organized under this chapter has all of the powers to specially assess the costs of improvements described in this section, including the power to issue special assessment bonds, warrants, project notes, or other forms of interim financing obligations, which cities have under the laws of this state.

95 Acts, ch 200, §17
NEW section

358C.18 Additional territory.

1. The district may be enlarged and additional territory annexed to the district by either of the following methods:

a. By petitions signed by the owners of all the property to be annexed to the district. If a petition requesting annexation is presented to the trustees and approved by the trustees the change in the boundaries to include the additional area shall be certified by the clerk of the district to the county auditor in which the greater portion of the district is located and thereafter the district shall include the area thus annexed.

b. By a petition filed with the clerk of the district, signed by persons owning not less than fifty percent of the area to be annexed, but not signed by persons owning all the area requested to be annexed. On the filing of the petition, the trustees of the district shall fix a time and place for a hearing on the petition and give notice of the hearing, as provided in section 331.305, and by certified mail to the record owners of all persons owning land within the territory sought to be annexed, not less than ten days prior to the date of the hearing, if the address of the owners is known or can be ascertained by reasonable diligence by the trustees. At the hearing, any person owning property within the area proposed to be annexed or any person owning property or residing within the district may appear and be heard. If, after the hearing, the board of trustees determines that annexation of the addi-

tional area will be conducive to the public health, convenience, and welfare and will not be an undue burden on the district, the board of trustees may, by resolution, annex the additional area and fix the boundary which shall not include more than the area requested in the petition. A copy of the resolution shall be filed with the county auditor of the county in which the largest portion of the district is located and thereafter the area included by the resolution shall be a part of the district.

2. All property, from and after it is annexed to the district, shall be subject to all taxes and other burdens levied by the district, regardless of when the obligation for which the taxes or assessments are levied was incurred.

95 Acts, ch 200, §18
NEW section

358C.19 Annexation by a city.

When a city or real estate improvement district proposes that the district be annexed by the city, either wholly or partially, an owner of property in the district shall not object to the annexation if a city annexes all the territory within the boundaries of a real estate improvement district, the district shall merge with the city and the city shall succeed to all the property and property rights of every kind, contracts, and obligations, held by or belonging to the district, and the city shall be liable for and recognize, assume, and carry out all valid contracts and obligations of the district. The city may assume and provide for the payment of the obligations of any bonds of the district by issuing general obligation, special assessment, or revenue refunding bonds which may be sold at public or private sale or exchanged for outstanding bonds. General obligation bonds of the city may be issued to refund special assessment and revenue obligations if the governing body of the city determines that it is in the best interest of the city. The refunding of these obligations shall constitute an essential corporate purpose under section 384.24. All taxes, assessments, claims, and demands of every kind due or owing to the district shall be paid to and collected by the city. Any special assessments which the district was authorized to levy, assess, relevel, or reassess, but which were not levied, assessed, relevelled, or reassessed, at the time of the merger, for improvements made by the district or in the process of construction or contracted for may be levied, assessed, relevelled, or reassessed by the annexing city to the same extent as the district may have levied or assessed but for the merger. However, this section does not authorize the annexing city to revoke any resolution, order, or finding made by the district in regard to special benefits or increase any assessments made by the district, but the city shall be bound by all findings or orders and assessments to the same extent as the district would be bound. Also, a district shall not levy any special assessments after the effective date of the annexation.

95 Acts, ch 200, §19
NEW section

358C.20 Effective date of merger.

The merger shall be effective thirty days after the effective date of the ordinance annexing the territory within the district. However, if the validity of the ordinance annexing the territory is challenged by a court proceeding, the effective date of the merger shall be thirty days after the final determination of the validity of the ordinance. The trustees of a district shall continue in possession and conduct the affairs of the district until the effective date of the merger, but shall not during the period levy any special assessments after the effective date of annexation.

95 Acts, ch 200, §20
NEW section

358C.21 Dissolution of district.

When a majority of the board of trustees of a district desire that the district be wholly dissolved, the trustees shall first propose a resolution declaring the advisability of the dissolution and setting out the terms and conditions of the dissolution, and also setting out the time and place when the board of trustees shall meet to consider the adoption of the resolution. Notice of the time and place when the resolution shall be set for consideration shall be published as provided in section 331.305, which publication shall contain the entire wording of the proposed resolution. If any part of the district lies within the area of the jurisdiction of a city, then the trustees shall mail a copy of the proposed resolution to the city on the date of first publication of the resolution. At the hearing the owners of property within the district, or a city if any part of the district lies within the city, may appear and make objections to the proposed resolution. If the owners representing a majority of the area of real estate within the district fail to sign and present to the board, on or prior to the hearing date, a written petition opposing the resolution, a majority of the board of trustees may pass the resolution and adopt the proposed dissolution. However, the resolution shall not be adopted if the district is obligated on any outstanding bonds, warrants, or other debts or obligations unless the holders of the bonds, warrants, or other debts or obligations all sign written consents to the dissolution prior to the adoption of the resolution of dissolution. If the petition opposing the resolution is signed by property owners representing a majority of the area of real estate within the district and presented to the board of trustees on or prior to the hearing date, the board of trustees shall not adopt the resolution. After the board of trustees has adopted the resolution of dissolution, the clerk of the district shall prepare and file a certified copy of the resolution of dissolution in the office of the county auditor where the original petition was filed. A district shall dissolve within ninety days following the merger of a district with a city.

95 Acts, ch 200, §21
NEW section

358C.22 Detachment of land.

1. When a majority of the board of trustees of a district desires that any property within the district be detached from the district, the trustees shall first propose a resolution declaring the advisability of the detachment and setting out the terms and conditions of the detachment and also setting out the time and place when the board of trustees will meet to consider the adoption of the resolution. Notice of the time and place when the resolution is set for consideration shall be published as provided in section 331.305, which publication shall contain the entire wording of the proposed resolution. If any part of the district lies within a city, then the trustees shall mail a copy of the proposed resolution to the city on the date of first publication of the resolution. At the hearing the owners of property within the district, or any city, may appear and make objections to the proposed resolution. If the owners representing a majority of the area of real estate within the district fail to sign and present to the board of trustees, on or prior to the hearing date, a written petition opposing the resolution, a majority of the board of trustees may pass the resolution and adopt the proposed detachment, except that the resolution shall not be adopted if the district is indebted on any outstanding bonds or warrants of the district unless the holders of the bonds and warrants all sign written consents to the detachment prior to the adoption of the resolution of detachment. If the petition opposing the resolution is signed by property owners representing a majority of the area of real estate within the district and presented to the board of trustees on or prior to the hearing date, the board of trustees shall not adopt the resolution. After the board of trustees has adopted the resolution of detachment, the clerk of the district shall prepare and file a certified copy of the resolution of detachment in the office of the county auditor where the original petition was filed, and the area detached shall become excluded and detached from the boundaries of the district.

2. The owner of a discrete tract of land which is part of a district but which is not connected to the main area of the district may petition the board of trustees of the district to have the property detached from the district. Following receipt of the petition, the board of trustees shall propose a resolution declaring the advisability of the detachment and setting out the terms and conditions of the detachment and setting out the time and place when the board of trustees will meet to consider the adoption of the resolution. Notice of the time and place for the consideration shall be published as provided in subsection 1. If any part of the district lies in whole or in part within a city, the board of trustees shall mail a copy of the proposed resolution to the municipality within five days after the date of first publication of the resolution. At the hearing for consideration of the resolution, the board of trustees shall determine if the tract of land proposed for detachment has all of the following characteristics:

- a. Has an area of twenty-five acres or more.

b. Is undeveloped and predominantly devoted to agricultural uses.

c. Has no improvements or obligations placed upon it by the district and receives no current services from the district.

3. If the board of trustees by majority vote determines that the tract in question meets all of the conditions provided in subsection 2, paragraphs "a" through "c", the resolution shall be adopted, except that the resolution shall not be adopted if the district is indebted on any outstanding bonds or warrants of the district unless the holders of the bonds and warrants all sign written consents to the detachment. After the board of trustees has adopted the

resolution of detachment, the clerk of the district shall prepare and file a certified copy of the resolution of detachment in the office of the county auditor where the original petition was filed and the area detached shall become excluded and detached from the boundaries of the district.

95 Acts, ch 200, §22
NEW section

358C.23 Chapter liberally construed.

The provisions of this chapter shall be liberally construed to facilitate the development of land for housing.

95 Acts, ch 200, §23
NEW section

CHAPTER 359

TOWNSHIPS AND TOWNSHIP OFFICERS

EMERGENCY SERVICES

359.42 Township fire protection service, emergency warning system, and emergency medical service.

The trustees of each township shall provide fire protection service for the township, exclusive of any part of the township within a benefited fire district and may provide emergency medical service. The trustees may purchase, own, rent, or maintain fire protection service or emergency medical service apparatus or equipment or both kinds of apparatus or equipment and provide housing for the equipment. The trustees of a township which is located within a county having a population of three hundred thousand or more may also establish and maintain an emergency warning system within the township. The trustees may contract with a public or private agency under chapter 28E for the purpose of providing any service or system required or authorized under this section.

95 Acts, ch 123, §1
Section amended

359.43 Tax levy — supplemental levy — districts.

1. The township trustees may levy an annual tax not exceeding forty and one-half cents per thousand dollars of assessed value of the taxable property in the township, excluding property within a benefited fire district or within the corporate limits of a city, for the purpose of exercising the powers and duties specified in section 359.42. However, in a township having a fire protection service or emergency medical service agreement or both service agreements with a special charter city having a paid fire department, the township trustees may levy an annual tax not exceeding

fifty-four cents per thousand dollars of the assessed value of the taxable property for the services authorized or required under section 359.42 and in a township which is located within a county having a population of three hundred thousand or more, the township trustees may levy an annual tax not exceeding sixty-seven and one-half cents per thousand dollars of assessed value of taxable property for the services authorized or required under section 359.42.

2. If the levy authorized under subsection 1 is insufficient to provide the services authorized or required under section 359.42, the township trustees may levy an additional annual tax not exceeding twenty and one-fourth cents per thousand dollars of assessed value of the taxable property in the township, excluding any property within the corporate limits of a city, to provide the services.

3. The township trustees may divide the township into tax districts for the purpose of providing the services authorized or required under section 359.42 and may levy a different tax rate in each district, but the tax levied in a tax district for the authorized or required services shall not exceed the tax levy limitations for that township as provided in this section.

4. Of the levies authorized under subsections 1 and 2, the township trustees may credit to a reserve account annually an amount not to exceed thirty cents per thousand dollars of the assessed value of the taxable property in the township for the purchase or replacement of supplies and equipment required to carry out the services specified under section 359.42. Notwithstanding section 12C.7, interest earned on moneys credited to the reserve account shall be credited to the reserve account.

95 Acts, ch 123, §2; 95 Acts, ch 158, §1
Subsections 1 and 4 amended

CHAPTER 360

TOWNSHIP HALLS

360.3 Transfer of fund.

When there are funds in the hands of a township clerk, raised under this chapter which are not desired for the purposes for which they were raised, the funds may be transferred to the general fund of a school district or districts pro rata in which the funds were raised, when a petition is presented to the trustees, signed by a majority of the registered voters of the

township, as shown by the election register or registers of the last preceding primary or general election held in the township. The transfer of funds shall be made by the township clerk upon order of the trustees after the filing of the petition with the clerk.

95 Acts, ch 67, §53
Terminology change applied

CHAPTER 364

POWERS AND DUTIES OF CITIES

364.4 Property and services outside of city — lease-purchase — insurance.

A city may:

1. Acquire, hold, and dispose of property outside the city in the same manner as within.

2. By contract, extend services to persons outside the city.

3. Enact and enforce ordinances relating to city property and city-extended services outside the city.

4. Enter into leases or lease-purchase contracts for real or personal property in accordance with the following terms and procedures:

a. A city shall lease or lease-purchase property only for a term which does not exceed the economic life of the property, as determined by the governing body.

b. A lease or lease-purchase contract entered into by a city may contain provisions similar to those sometimes found in leases between private parties, including, but not limited to, the obligation of the lessee to pay any of the costs of operation or ownership of the leased property and the right to purchase the leased property.

c. A provision of a lease or lease-purchase contract which stipulates that a portion of the rent payments be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 is not applicable. A city utility or city enterprise is a separate entity under this subsection whether it is governed by the governing body of the city or another governing body.

d. The governing body must follow substantially the same authorization procedure required for the issuance of general obligation bonds issued for the same purpose to authorize a lease or a lease-purchase contract made payable from the debt service fund.

e. The governing body may authorize a lease or lease-purchase contract which is payable from the general fund and which would not cause the total of annual lease or lease-purchase payments of the city due from the general fund of the city in any future year for lease or lease-purchase contracts in force on

the date of the authorization, excluding payments to exercise purchase options or to pay the expenses of operation or ownership of the property, to exceed ten percent of the last certified general fund budget amount in accordance with the following procedures:

(1) The governing body must follow substantially the authorization procedures of section 384.25 to authorize a lease or lease-purchase contract for personal property which is payable from the general fund. The governing body must follow substantially the authorization procedures of section 384.25 to authorize the lease or lease-purchase contract for real property which is payable from the general fund if the principal amount of the lease-purchase contract does not exceed the following limits:

(a) Four hundred thousand dollars in a city having a population of five thousand or less.

(b) Seven hundred thousand dollars in a city having a population of more than five thousand but not more than seventy-five thousand.

(c) One million dollars in a city having a population of more than seventy-five thousand.

(2) The governing body must follow the following procedures to authorize a lease or lease-purchase contract for real property which is payable from the general fund if the principal amount of the lease or lease-purchase contract exceeds the limits set forth in subparagraph (1):

(a) The governing body must institute proceedings to enter into a lease or lease-purchase contract payable from the general fund by causing a notice of the meeting to discuss entering into the lease or lease-purchase contract, including a statement of the principal amount and purpose of the lease or lease-purchase contract and the right to petition for an election, to be published at least once in a newspaper of general circulation within the city at least ten days prior to the discussion meeting. No sooner than thirty days following the discussion meeting shall the governing body hold a meeting at which it is proposed to take action to enter into the lease or lease-purchase contract.

(b) If at any time before the end of the thirty-day period after which a meeting may be held to take action to enter into the lease or lease-purchase contract, a petition is filed with the clerk of the city in the manner provided by section 362.4, asking that the question of entering into the lease or lease-purchase contract be submitted to the registered voters of the city, the governing body shall either by resolution declare the proposal to enter into the lease or lease-purchase contract to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of entering into the lease or lease-purchase contract. However, for purposes of this subparagraph, the petition shall not require signatures in excess of one thousand persons. The question to be placed on the ballot shall be stated affirmatively in substantially the following manner: Shall the city of enter into a lease or lease-purchase contract in amount of \$..... for the purpose of? Notice of the election and its conduct shall be in the manner provided in section 384.26, subsections 2 through 4.

(c) If a petition is not filed or if a petition is filed and the proposition of entering into the lease or lease-purchase contract is approved at an election, the governing body may proceed and enter into the lease or lease-purchase contract.

f. The governing body may authorize a lease or lease-purchase contract payable from the net revenues of a city utility, combined utility system, city enterprise, or combined city enterprise by following the authorization procedures of section 384.83.

g. A lease or lease-purchase contract to which a city is a party or in which a city has a participatory interest is an obligation of a political subdivision of this state for the purposes of chapters 502 and 636, and is a lawful investment for banks, trust companies, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees, and any other fiduciaries responsible for the investment of funds.

h. Property that is lease-purchased by a city is exempt under section 427.1, subsection 2.

i. A contract for construction by a private party of property to be leased or lease-purchased by a city is not a contract for a public improvement under section 384.95, subsection 1, except for purposes of section 384.102. However, if a lease-purchase contract is funded in advance by means of the lessor depositing moneys to be administered by a city, with the city's obligations to make rent payments commencing with its receipt of moneys, a contract for construction of the property in question awarded by the city is subject to division VI of chapter 384.

5. Enter into insurance agreements obligating the city to make payments beyond its current budget year to procure or provide for a policy of insurance, a self-insurance program, or a local government risk pool to protect the city against tort liability, loss of property, or any other risk associated with the operation of the city. Such a self-insurance program or

local government risk pool is not insurance and is not subject to regulation under chapters 505 through 523C. However, those self-insurance plans regulated pursuant to section 509A.14 shall remain subject to the requirements of section 509A.14 and rules adopted pursuant to that section.

95 Acts, ch 67, §53
Terminology change applied

364.5 Joint action — Iowa league of cities — penalty.

A city or a board established to administer a city utility, in the exercise of any of its powers, may act jointly with any public or private agency as provided in chapter 28E.

The financial condition and the transactions of the Iowa league of cities shall be audited in the same manner as cities as provided in section 11.6.

It is unlawful for the Iowa league of cities to provide any form of aid to a political party or to the campaign of a candidate for political or public office. Any person violating or being an accessory to a violation of this section is guilty of a simple misdemeanor.

A city may enter into an agreement with the federal government acting through any of its authorized agencies, and may carry out provisions of the agreement as necessary to meet federal requirements to obtain the funds or co-operation of the federal government or its agencies for the planning, construction, rehabilitation, or extension of a public improvement.

95 Acts, ch 3, §4
Unnumbered paragraphs 2 and 3 amended

364.12 Responsibility for public places.

1. As used in this section, "property owner" means the contract purchaser if there is one of record, otherwise the record holder of legal title.

2. A city shall keep all public grounds, streets, sidewalks, alleys, bridges, culverts, overpasses, underpasses, grade crossing separations and approaches, public ways, squares, and commons open, in repair, and free from nuisance, with the following exceptions:

a. Public ways and grounds may be temporarily closed by resolution. Following notice as provided in section 362.3, public ways and grounds may be vacated by ordinance.

b. The abutting property owner is responsible for the removal of the natural accumulations of snow and ice from the sidewalks within a reasonable amount of time and may be liable for damages caused by the failure of the abutting property owner to use reasonable care in the removal of the snow or ice. If damages are to be awarded under this section against the abutting property owner, the claimant has the burden of proving the amount of the damages. To authorize recovery of more than a nominal amount, facts must exist and be shown by the evidence which afford a reasonable basis for measuring the amount of the claimant's actual damages, and the amount of actual damages shall not be determined by specula-

tion, conjecture, or surmise. All legal or equitable defenses are available to the abutting property owner in an action brought pursuant to this paragraph. The city's general duty under this subsection does not include a duty to remove natural accumulations of snow or ice from the sidewalks. However, when the city is the abutting property owner it has the specific duty of the abutting property owner set forth in this paragraph.

c. The abutting property owner may be required by ordinance to maintain all property outside the lot and property lines and inside the curb lines upon the public streets, except that the property owner shall not be required to remove diseased trees or dead wood on the publicly owned property or right of way.

d. A city may serve notice on the abutting property owner, by certified mail to the property owner as shown by the records of the county auditor, requiring the abutting property owner to repair, replace, or reconstruct sidewalks.

e. If the abutting property owner does not perform an action required under this subsection within a reasonable time, a city may perform the required action and assess the costs against the abutting property for collection in the same manner as a property tax. This power does not relieve the abutting property owner of liability imposed under paragraph "b".

f. A city has no duty under this subsection with respect to property that is required by law to be maintained by a railway company.

3. A city may:

a. Require the abatement of a nuisance, public or private, in any reasonable manner.

b. Require the removal of diseased trees or dead wood, except as stated in subsection 2, paragraph "c" of this section.

c. Require the removal, repair, or dismantling of a dangerous building or structure.

d. Require the numbering of buildings.

e. Require connection to public drainage systems from abutting property when necessary for public health or safety.

f. Require connection to public sewer systems from abutting property, and require installation of sanitary toilet facilities and removal of other toilet facilities on such property.

g. Require the cutting or destruction of weeds or other growth which constitutes a health, safety, or fire hazard.

h. If the property owner does not perform an action required under this subsection within a reasonable time after notice, a city may perform the required action and assess the costs against the property for collection in the same manner as a

property tax. Notice may be in the form of an ordinance or by certified mail to the property owner as shown by the records of the county auditor, and shall state the time within which action is required. However, in an emergency a city may perform any action which may be required under this section without prior notice, and assess the costs as provided in this subsection, after notice to the property owner and hearing.

4. In addition to any other remedy provided by law, a city may also seek reimbursement for costs incurred in performing any act authorized by this section by a civil action for damages against a property owner. However, a city shall not seek reimbursement for costs incurred in performing an act if the same act has not been performed by the city on adjoining city-owned property. For the purposes of this subsection, a county acquiring property for delinquent taxes shall not be considered a property owner.

5. A city may cause, without prior determination and notice, the repair or replacement of public improvements including, but not limited to, sidewalks, water stop boxes, and driveway approaches if the property owner does all of the following:

a. Requests the repair and replacement of the public improvements specified in this subsection abutting the property owner's property located outside the lot and property lines and inside the curb lines.

b. Waives the requirement of a prior finding by the city council that the condition of the public improvements constitutes a nuisance and the requirement of prior notice.

c. Consents to the repair of the public improvements and the assessment of the cost of the repair to the abutting property.

6. If, in repairing and replacing improvements in the area between the lot or property lines and the curb lines pursuant to subsection 5, it becomes necessary for the city to repair or replace adjacent improvements in the area, the cost of repairing or replacing the adjacent public improvements may be assessed, with consent of the property owner, against the property which the public improvements abut.

7. A city may accumulate individual assessments for the repair and replacement of sidewalks, driveway approaches, water stop boxes, or similar improvements or for the abatement of nuisances, and may periodically certify the assessments to the county treasurer under one or more assessment schedules.

95 Acts, ch 58, §1
NEW subsections 5, 6 and 7

CHAPTER 368

CITY DEVELOPMENT

368.19 Time limit — election.

The committee shall approve or disapprove the petition or plan as amended, within ninety days of the final hearing, and shall file its decision for record and promptly notify the parties to the proceeding of its decision. If a petition or plan is approved, the board shall set a date not less than thirty days nor more than ninety days after approval for a special election on the proposal and the county commissioner of elections shall conduct the election. In a case of incorporation or discontinuance, registered voters of the territory or city may vote, and the proposal is authorized if a majority of those voting approves it. In a case of annexation or severance, registered voters of the territory and of the city may vote, and the

proposal is authorized if a majority of the total number of persons voting approves it. In a case of consolidation, registered voters of each city to be consolidated may vote, and the proposal is authorized only if it receives a favorable majority vote in each city. The county commissioner of elections shall publish notice of the election as provided in section 49.53 and shall conduct the election in the same manner as other special city elections.

The costs of an incorporation election shall be borne by the initiating petitioners if the election fails, but if the proposition is approved the cost shall become a charge of the new city.

95 Acts, ch 67, §53
Terminology change applied

CHAPTER 373

CONSOLIDATED METROPOLITAN CORPORATIONS

373.6 Referendum — effective date.

1. If a proposed charter for consolidation is received not later than sixty days before the next general election, the council of the participating city with the largest population shall direct the county commissioner of elections to submit to the registered voters of the participating cities at the next general election the question of whether the proposed charter shall be adopted. A summary of the proposed charter shall be published in a newspaper of general circulation in each city participating in the charter commission process at least ten but not more than twenty days before the date of the election. The proposed charter shall be effective in regard to a city only if a majority of the electors of the city voting approves the proposed charter.

2. If a proposed charter for consolidation is adopted:

a. The adopted charter shall take effect July 1 following the election at which it is approved unless the charter provides a later effective date. A special election shall be called to elect the new elective officers.

b. The adoption of the consolidated metropolitan corporation form of government does not alter any

right or liability of any participating city in effect at the time of the election at which the charter was adopted.

c. All departments and agencies shall continue to operate until replaced.

d. All ordinances or resolutions in effect remain effective until amended or repealed, unless they are irreconcilable with the adopted charter.

e. Upon the effective date of the adopted charter, the participating cities shall adopt the consolidation form by ordinance, and shall file a copy with the secretary of state, and maintain available copies for public inspection.

3. If a charter is submitted to the electorate but is not adopted, another charter shall not be submitted to the electorate for two years. If a charter is adopted, it may be amended at any time. If a charter is adopted, a proposed charter for another alternative form of city government shall not be submitted to the electorate for six years.

4. Section 372.2 shall not apply to a charter commission established under this chapter.

95 Acts, ch 67, §53
Terminology change applied

CHAPTER 384

CITY FINANCE

384.12 Additional taxes.

A city may certify, for the general fund levy, taxes which are not subject to the limit provided in section 384.1, and which are in addition to any other moneys the city may wish to spend for such purposes, as follows:

1. A tax not to exceed thirteen and one-half cents per thousand dollars of assessed value for the support of instrumental or vocal musical groups, one or more organizations which have tax-exempt status under section 501(c)(3) of the Internal Revenue Code and are organized and operated exclusively for artistic and cultural purposes, or any of these purposes, subject to the following:

a. Upon receipt of a petition valid under the provisions of section 362.4, the council shall submit to the voters at the next regular city election the question of whether a tax shall be levied.

b. If a majority approves the levy, it may be imposed.

c. The levy can be eliminated by the same procedure of petition and election.

d. A tax authorized by an election held prior to the effective date of the city code may be continued until eliminated by the council, or by petition and election.

2. A tax not to exceed eighty-one cents per thousand dollars of assessed value for development, operation, and maintenance of a memorial building or monument, subject to the provisions of subsection 1.

3. A tax not to exceed thirteen and one-half cents per thousand dollars of assessed value for support of a symphony orchestra, subject to the provisions of subsection 1.

4. A tax not to exceed twenty-seven cents per thousand dollars of assessed value for the operation of cultural and scientific facilities, subject to the provisions of subsection 1, except that the question may be submitted on the council's own motion.

5. A tax to aid in the construction of a county bridge, subject to the provisions of subsection 1, except that the question must be submitted at a special election. The expense of a special election under this subsection must be paid by the county. The notice of the special election must include full details of the proposal, including the location of the proposed bridge, the rate of tax to be levied, and all other conditions.

6. A tax to aid a company incorporated under the laws of this state in the construction of a highway or combination bridge across any navigable boundary river of this state, commencing or terminating in the city and suitable for use as highway, or for both highway and railway purposes. This tax levy is subject to the provisions of subsections 1 and 5. The levy is limited to one dollar and thirty-five cents per thousand dollars of the assessed value of taxable property in the city. The estimated cost of the bridge must be at least ten thousand dollars, and the city aid

may not exceed one-half of the estimated cost. The notice of the special election must include the name of the corporation to be aided, and all conditions required of the corporation. Tax moneys received for this purpose may not be paid over by the county treasurer until the city has filed a statement that the corporation has complied with all conditions.

7. If a tax has been voted for aid of a bridge under subsection 6, a further tax may be voted for the purpose of purchasing the bridge, subject to the provisions of subsection 1. The levy under this subsection is limited to three dollars and thirty-seven and one-half cents per thousand dollars of the assessed value of the taxable property in the city, payable in not less than ten annual installments.

8. A tax for the purpose of carrying out the terms of a contract for the use of a bridge by a city situated on a river over which a bridge has been built. The tax may not exceed sixty-seven and one-half cents per thousand dollars of assessed value each year.

9. A tax for aid to a public transportation company, subject to the procedure provided in subsection 1, except the question must be submitted at a special election. The levy is limited to three and three-eighths cents per thousand dollars of assessed value. In addition to any other conditions the following requirements must be met before moneys received for this purpose may be paid over by the county treasurer:

a. The public transportation company shall provide the city with copies of state and federal income tax returns for the five years preceding the year for which payment is contemplated or for such lesser period of time as the company has been in operation.

b. The city shall, in any given year, be authorized to pay over only such sums as will yield not to exceed two percent of the public transportation company's investment as the same is valued in its tax depreciation schedule, provided that corporate profits and losses for the five preceding years or for such lesser period of time as the company has been in operation shall not average in excess of a two percent net return. Taxes levied under this subsection may not be used to subsidize losses incurred prior to the election required by this subsection.

10. A tax for the operation and maintenance of a municipal transit system, and for the creation of a reserve fund for the system, in an amount not to exceed ninety-five cents per thousand dollars of assessed value each year, when the revenues from the transit system are insufficient for such purposes, but proceeds of the tax may not be used to pay interest and principal on bonds issued for the purposes of the transit system.

11. If a city has entered into a lease of a building or complex of buildings to be operated as a civic center, a tax sufficient to pay the installments of rent and for maintenance, insurance and taxes not included in the lease rental payments.

12. A tax not to exceed thirteen and one-half cents per thousand dollars of assessed value each year for operating and maintaining a civic center owned by a city.

13. A tax not to exceed six and three-fourths cents per thousand dollars of assessed value for planning a sanitary disposal project.

14. A tax not to exceed twenty-seven cents per thousand dollars of assessed value each year for an aviation authority as provided in section 330A.15.

15. If a city has joined with the county to form an authority for a joint county-city building, as provided in section 346.27, and has entered into a lease with the authority, a tax sufficient to pay the annual rent payable under the lease.

16. A tax not to exceed six and three-fourths cents per thousand dollars of assessed value each year for a levee improvement fund in special charter cities as provided in section 420.155.

17. A tax not to exceed twenty and one-half cents per thousand dollars of assessed value each year to maintain an institution received by gift or devise, subject to an election as required under subsection 1.

18. A tax to pay the premium costs on tort liability insurance, property insurance, and any other insurance that may be necessary in the operation of the city, the costs of a self-insurance program, the costs of a local government risk pool and amounts payable under any insurance agreements to provide or procure such insurance, self-insurance program, or local government risk pool.

19. A tax to fund an emergency medical services district under chapter 357G.

20. A tax that exceeds any tax levy limit within this chapter, provided the question has been submitted at a special levy election and received a simple majority of the votes cast on the proposition to authorize the enumerated levy limit to be exceeded for the proposed budget year.

a. The election may be held as specified in this subsection if notice is given by the city council, not later than thirty-two days before the second Tuesday in March, to the county commissioner of elections that the election is to be held.

b. An election under this subsection shall be held on the second Tuesday in March and be conducted by the county commissioner of elections in accordance with the law.

c. The ballot question shall be in substantially the following form:

WHICH TAX LEVY SHALL BE ADOPTED FOR THE CITY OF

(Vote for only one of the following choices.)

CHANGE LEVY AMOUNT

Add to the existing levy amount a tax for the purpose of (state purpose of proposed levy) at a rate of (rate) which will provide an additional \$..... (amount).

KEEP CURRENT LEVY

Continue under the current maximum rate of, providing \$..... (amount).

d. The commissioner of elections conducting the election shall notify the city officials and other county auditors where applicable, of the results within two days of the canvass which shall be held beginning at one o'clock on the second day following the special levy election.

e. Notice of the election shall be published twice in accordance with the provisions of section 362.3, except that the first such notice shall be given at least two weeks before the election.

f. The cost of the election shall be borne by the city.

g. The election provisions of this subsection shall supersede other provisions for elections only to the extent necessary to comply with the provisions hereof.

h. The provisions of this subsection apply to all cities, however organized, including special charter cities which may adopt ordinances where necessary to carry out these provisions.

i. The council shall certify the city's budget with the tax askings not exceeding the amount approved by the special levy election.

21. A tax not to exceed twenty-seven cents per thousand dollars of assessed value for support of a public library, subject to petition and referendum requirements of subsection 1, except that if a majority approves the levy, it shall be imposed.

22. A tax for the support of a local emergency management commission established pursuant to chapter 29C.

95 Acts, ch 189, §21
Subsection 20, paragraph a amended

384.21 Joint investment of funds.

A city or a city utility board shall keep all funds invested to the extent practicable and may invest the funds jointly with one or more cities, utility boards, judicial district departments of correctional services, counties, or rural water districts created under chapter 357A pursuant to a joint investment agreement. All investments of funds shall be subject to sections 12B.10 and 12B.10A and other applicable law.

95 Acts, ch 77, §6
Section amended

384.24A Loan agreements.

A city may enter into loan agreements to borrow money for any public purpose in accordance with the following terms and procedures:

1. A loan agreement entered into by a city may contain provisions similar to those sometimes found in loan agreements between private parties, including, but not limited to, the issuance of notes to evidence its obligations.

2. A provision of a loan agreement which stipulates that a portion of the payments be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 is not applicable. A city utility or city enterprise is a separate entity under this section whether it is governed by the governing body of the city or another governing body.

3. The governing body shall follow substantially the same authorization procedure required for the issuance of general obligation bonds issued for the same purpose to authorize a loan agreement made payable from the debt service fund.

4. The governing body may authorize a loan agreement which is payable from the general fund and which would not cause the total of scheduled annual payments of principal or interest or both principal and interest of the city due from the general fund of the city in any future year with respect to all loan agreements in force on the date of the authorization to exceed ten percent of the last certified general fund budget amount in accordance with the following procedures:

a. The governing body must follow substantially the authorization procedures of section 384.25 to authorize a loan agreement for personal property which is payable from the general fund. The governing body must follow substantially the authorization procedures of section 384.25 to authorize a loan agreement for real property which is payable from the general fund if the principal amount of the loan agreement does not exceed the following limits:

- (1) Four hundred thousand dollars in a city having a population of five thousand or less.
- (2) Seven hundred thousand dollars in a city having a population of more than five thousand but not more than seventy-five thousand.
- (3) One million dollars in a city having a population of more than seventy-five thousand.

b. The governing body must follow the following procedures to authorize a loan agreement for real property which is payable from the general fund if the principal amount of the loan agreement exceeds the limits set forth in paragraph "a":

(1) The governing body must institute proceedings to enter into a loan agreement payable from the general fund by causing a notice of the meeting to discuss entering into the loan agreement, including a statement of the principal amount and purpose of the loan agreement and the right to petition for an election, to be published at least once in a newspaper of general circulation within the city at least ten days prior to the discussion meeting. No sooner than thirty days following the discussion meeting shall the governing body hold a meeting at which it is proposed to take action to enter into the loan agreement.

(2) If at any time before the end of the thirty-day period after which a meeting may be held to take action to enter into the loan agreement, a petition is filed with the clerk of the city in the manner provided by section 362.4, asking that the question of entering into the loan agreement be submitted to the registered voters of the city, the governing body shall either by resolution declare the proposal to enter into the loan agreement to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of entering into the loan agreement. However, for purposes of this paragraph, the petition shall not require signatures in excess of one thousand persons. The question to be placed on the ballot shall be stated affirmatively in

substantially the following manner: Shall the city of enter into a loan agreement in amount of \$..... for the purpose of? Notice of the election and its conduct shall be in the manner provided in section 384.26, subsections 2 through 4.

(3) If a petition is not filed or if a petition is filed and the proposition of entering into the loan agreement is approved at an election, the governing body may proceed and enter into the loan agreement.

5. The governing body may authorize a loan agreement payable from the net revenues of a city utility, combined utility system, city enterprise, or combined city enterprise by following the authorization procedures of section 384.83.

6. A loan agreement to which a city is a party or in which the city has a participatory interest is an obligation of a political subdivision of this state for the purposes of chapters 502 and 636, and is a lawful investment for banks, trust companies, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees, and any other fiduciaries responsible for the investment of funds.

95 Acts, ch 67, §53
Terminology change applied

384.26 General obligation bonds for general purposes.

1. A city which proposes to carry out any general corporate purpose within or without its corporate limits, and to contract indebtedness and issue general obligation bonds to provide funds to pay all or any part of the costs of a project, must do so in accordance with the provisions of this division.

2. Before the council may institute proceedings for the issuance of bonds for a general corporate purpose, it shall call a special city election to vote upon the question of issuing the bonds. At the election the proposition must be submitted in the following form:

Shall the (insert the name of the city) issue its bonds in an amount not exceeding the amount of \$..... for the purpose of?

3. Notice of the election must be given by publication as required by section 49.53 in a newspaper of general circulation in the city. At the election the ballot used for the submission of the proposition must be in substantially the form for submitting special questions at general elections.

4. The proposition of issuing general corporate purpose bonds is not carried or adopted unless the vote in favor of the proposition is equal to at least sixty percent of the total vote cast for and against the proposition at the election. If the proposition of issuing the general corporate purpose bonds is approved by the voters, the city may proceed with the issuance of the bonds.

5. a. Notwithstanding the provisions of subsection 2, a council may, in lieu of calling an election,

institute proceedings for the issuance of bonds for a general corporate purpose by causing a notice of the proposal to issue the bonds, including a statement of the amount and purpose of the bonds, together with the maximum rate of interest which the bonds are to bear, and the right to petition for an election, to be published at least once in a newspaper of general circulation within the city at least ten days prior to the meeting at which it is proposed to take action for the issuance of the bonds subject to the following limitations:

(1) In cities having a population of five thousand or less, in an amount of not more than four hundred thousand dollars.

(2) In cities having a population of more than five thousand and not more than seventy-five thousand, in an amount of not more than seven hundred thousand dollars.

(3) In cities having a population in excess of seventy-five thousand, in an amount of not more than one million dollars.

b. If at any time before the date fixed for taking action for the issuance of the bonds, a petition is filed with the clerk of the city in the manner provided by section 362.4, asking that the question of issuing the bonds be submitted to the registered voters of the city, the council shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds. Notice of the election and its conduct shall be in the manner provided in the preceding subsections of this section.

c. If no petition is filed, or if a petition is filed and the proposition of issuing the bonds is approved at an election, the council may proceed with the authorization and issuance of the bonds.

95 Acts, ch 67, §53
Terminology change applied

384.65 Installments due.

1. The first installment of each assessment, or the total amount if less than fifty dollars, is due and payable on July 1 next succeeding the date of the levy, unless the assessment is filed with the county treasurer after May 31 in any year. The first installment shall bear interest on the whole unpaid assessment from the date of acceptance of the work by the council to the first day of December following the due date.

2. The succeeding annual installments, with interest on the whole unpaid amount, to the first day of December following the due date, are respectively due on July 1 annually, and must be paid at the same time and in the same manner as the September semiannual payment of ordinary taxes.

3. All future installments of an assessment may be paid on any date by payment of the then outstanding balance, plus interest to the next December 1, or additional annual installments may be paid after the current installment has been paid before December 1 without interest. A payment must be for the full amount of the next installment. If installments re-

main to be paid, the next annual installment with interest added to December 1 will be due as provided in subsection 2.

4. Each installment of an assessment with interest on the unpaid balance is delinquent from October 1 after its due date, unless the last day of September is a Saturday or Sunday, in which case the installment becomes delinquent from the following Tuesday, and bears the same delinquent interest as ordinary taxes. When collected, the interest must be credited to the same fund as the special assessment.

5. From the date of filing of a certified copy of the resolution of necessity, the plat, and the schedule of assessments as provided in section 384.51, all special assessments with all interest become and remain a lien on the benefited properties until paid, and have equal precedence with ordinary taxes, and are not divested by any judicial sale.

6. After December 1, if a special assessment is not delinquent, a property owner may pay one-half or all of the next annual installment of principal and interest of a special assessment prior to the delinquency date of the installment. When the next installment has been paid in full, successive principal installments may be prepaid. The county treasurer shall accept the payments of the special assessment, and shall credit the next annual installment or future installments of the special assessment to the extent of the payment or payments, and shall remit the payments to the city. If a property owner elects to pay one or more principal installments in advance, the pay schedule shall be advanced by the number of principal installments prepaid.

7. Each installment of an assessment shall be equal to the amount of the unpaid assessment as computed on the thirty-first day after the certification of the assessment divided by the number of annual installments into which the assessment may be divided as adopted by the council pursuant to section 384.60.

8. Each installment of a special assessment shall be calculated to the nearest whole dollar. Interest on unpaid installments and interest added for delinquencies shall also be calculated to the nearest whole dollar. The minimum interest amount is one dollar.

95 Acts, ch 57, §8
Subsection 6 amended

384.84 Rates and charges — billing and collection — contracts.

1. The governing body of a city utility, combined utility system, city enterprise, or combined city enterprise may establish, impose, adjust, and provide for the collection of rates and charges to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the city utility, combined utility system, city enterprise, or combined city enterprise. When revenue bonds or pledge orders are issued and outstanding pursuant to this division, the governing body shall establish, impose, adjust, and provide for the collection of rates to produce gross revenues at least sufficient to pay the expenses of

operation and maintenance of the city utility, combined utility system, city enterprise, or combined city enterprise, and to leave a balance of net revenues sufficient to pay the principal of and interest on the revenue bonds and pledge orders as they become due and to maintain a reasonable reserve for the payment of principal and interest, and a sufficient portion of net revenues must be pledged for that purpose. Rates must be established by ordinance of the council or by resolution of the trustees, published in the same manner as an ordinance.

2. a. A city utility or enterprise service to a property or premises, including services of sewer systems, storm water drainage systems, sewage treatment, solid waste collection, water, solid waste disposal, or any of these services, may be discontinued if the account for the service becomes delinquent. Gas or electric service provided by a city utility or enterprise shall be discontinued only as provided by section 476.20, and discontinuance of those services are subject to rules adopted by the utilities board of the department of commerce.

b. If more than one city utility or enterprise service is billed to a property or premises as a combined service account, all of the services may be discontinued if the account becomes delinquent.

c. A city utility or enterprise service to a property or premises shall not be discontinued unless prior written notice is sent to the account holder by ordinary mail, informing the account holder of the nature of the delinquency and affording the account holder the opportunity for a hearing prior to discontinuance of service. If the account holder is a tenant, and if the owner or landlord of the property has made a written request for notice, the notice shall also be given to the owner or landlord.

3. a. All rates or charges for the services of sewer systems, storm water drainage systems, sewage treatment, solid waste collection, water, solid waste disposal, or any of these services, if not paid as provided by ordinance of the council or resolution of the trustees, are a lien upon the property or premises served by any of these services upon certification to the county treasurer that the rates or charges are due.

b. This lien may be imposed upon a property or premises even if a city utility or enterprise service to the property or premises has been or may be discontinued as provided in this section.

c. A lien for a city utility or enterprise service shall not be certified to the county treasurer for collection unless prior written notice of intent to certify a lien is given to the account holder of the delinquent account. If the account holder is a tenant, and if the owner or landlord of the property has made a written request for notice, the notice shall also be given to the owner or landlord. The notice shall be sent to the appropriate persons by ordinary mail not less than ten days prior to certification of the lien to the county treasurer.

d. For a residential rental property where a charge for water service is separately metered and

paid directly by the tenant, the rental property is exempt from a lien for those delinquent charges incurred after the landlord gives written notice to the city utility or enterprise that the tenant is liable for the charges and a deposit not exceeding the usual cost of ninety days of water service is paid to the utility or enterprise. Upon receipt, the utility or enterprise shall acknowledge the notice and deposit. A written notice shall contain the name of the tenant responsible for charges, address of the property that the tenant is to occupy, and the date that the occupancy begins. A change in tenant shall require a new written notice and deposit. When the tenant moves from the rental property, the city utility or enterprise shall return the deposit if the water service charges are paid in full and the lien exemption shall be lifted from the rental property. The lien exemption for rental property does not apply to charges for repairs to a water service if the repair charges become delinquent.

4. A lien shall not be imposed pursuant to this section for a delinquent charge of less than five dollars. The governing body of the city utility or enterprise may charge up to five dollars, and the county treasurer may charge up to five dollars, as an administrative expense of certifying and filing this lien, which amounts shall be added to the amount of the lien to be collected at the time of payment of the assessment from the payor. Administrative expenses collected by the county treasurer on behalf of the city utility or enterprise shall be paid to the governing body of the city utility or enterprise, and those collected by the county treasurer on behalf of the county shall be credited to the county general fund. The lien has equal precedence with ordinary taxes, may be certified to the county treasurer and collected in the same manner as taxes, and is not divested by a judicial sale.

5. A governing body may declare all or a certain portion of a city as a storm water drainage system district for the purpose of establishing, imposing, adjusting, and providing for the collection of rates as provided in this section. The ordinance provisions for collection of rates of a storm water drainage system may prescribe a formula for determination of the rates which may include criteria and standards by which benefits have been previously determined for special assessments for storm water public improvement projects under this chapter.

6. a. The governing body of a city utility, combined utility system, city enterprise, or combined city enterprise may:

(1) By ordinance of the council or by resolution of the trustees published in the same manner as an ordinance, establish, impose, adjust, and provide for the collection of charges for connection to a city utility or combined utility system.

(2) Contract for the use of or services provided by a city utility, combined utility system, city enterprise, or combined city enterprise with persons whose type or quantity of use or service is unusual.

(3) Lease for a period not to exceed fifteen years all or part of a city enterprise or combined city

enterprise, if the lease will not reduce the net revenues to be produced by the city enterprise or combined city enterprise.

(4) Contract for a period not to exceed forty years with other governmental bodies for the use of or the services provided by the city utility, combined utility system, city enterprise, or combined city enterprise on a wholesale basis.

(5) Contract for a period not to exceed forty years with persons and other governmental bodies for the purchase or sale of water, gas, or electric power and energy on a wholesale basis.

b. Two or more city utilities, combined utility systems, city enterprises, or combined city enterprises, including city utilities established pursuant to chapter 388, may contract pursuant to chapter 28E for joint billing or collection, or both, of combined service accounts for utility or enterprise services, or both. The contracts may provide for the discontinuance of one or more of the city utility or enterprise services if a delinquency occurs in the payment of any charges billed under a combined service account.

7. The portion of cost attributable to the agreement or arbitration awarded under section 357A.21 may be apportioned in whole or in part among water customers within an annexed area.

95 Acts, ch 49, §11; 95 Acts, ch 57, §9; 95 Acts, ch 67, §31
See Code editor's note to §13B.8
Subsection 4 amended
Subsection 6, paragraph a, subparagraph (5) amended

384.84A Special election.

1. The governing body of a city may institute proceedings to issue revenue bonds for storm water drainage construction projects under section 384.84, subsection 5, by causing notice of the proposed project, with a description of the proposed project and a description of the formula for the determination of the rate or rates applied to users for payment of the bonds, and a description of the bonds and maximum rate of interest and the right to petition for an election if the project meets the requirement of subsection 2, to be published at least once in a newspaper of general circulation within the city at least thirty days before the meeting at which the governing body proposes to take action to institute proceedings for issuance of revenue bonds for the storm water drainage construction project.

2. If, before the date fixed for taking action to authorize the issuance of revenue bonds for the storm water drainage construction project, a petition signed by three percent of the registered voters of the city, asking that the question of issuing revenue bonds for the storm water drainage construction project be submitted to the registered voters of the city, the council, by resolution, shall declare the project abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds for the storm water drainage construction project if the cost of the project and population of the city meet one of the following criteria:

a. The project cost is seven hundred fifty thousand dollars or more in a city having a population of five thousand or less.

b. The project cost is one million five hundred thousand dollars or more in a city having a population of more than five thousand but not more than seventy-five thousand.

c. The project cost is two million dollars or more in a city having a population of more than seventy-five thousand.

3. The proposition of issuing revenue bonds for a storm water drainage construction project under this section is not approved unless the vote in favor of the proposition is equal to a majority of the votes cast on the proposition.

4. If a petition is not filed, or if a petition is filed and the proposition is approved at an election, the council may issue the revenue bonds.

5. If a city is required by the federal environmental protection agency to file application for storm water sewer discharge or storm water drainage system under the federal Clean Water Act of 1987, this section does not apply to that city with respect to improvements and facilities required for compliance with EPA regulations, or any city that enters into a chapter 28E agreement to implement a joint storm water discharge or drainage system with a city that is required by the federal environmental protection agency to file application for storm water discharge or storm water drainage system.

95 Acts, ch 67, §53
Terminology change applied

CHAPTER 392

ADMINISTRATIVE AGENCIES

392.1 Establishment by ordinance.

If the council wishes to establish an administrative agency, it shall do so by an ordinance which indicates the title, powers, and duties of the agency, the method of appointment or election, qualifications, compensation, and term of members, and other appropriate matters relating to the agency. The title of an ad-

ministrative agency must be appropriate to its function. The council may not delegate to an administrative agency any of the powers, authorities, and duties prescribed in division V of chapter 384 or in chapter 388, except that the council may delegate to an administrative agency established for the purpose of operating an airport any of its powers and duties

prescribed in division V of chapter 384, and the council may delegate to an administrative agency power to establish and collect charges, and disburse the moneys received for the use of a city facility, including a city enterprise, as defined in section 384.24, if the delegation to an administrative agency is strictly subject to the limitations imposed by the revenue bonds or pledge orders outstanding which are payable from the revenues of the city enterprise. Except as otherwise provided in this chapter, the

council may delegate rulemaking authority to the agency for matters within the scope of the agency's powers and duties, and may prescribe penalties for violation of agency rules which have been adopted by ordinance. Rules governing the use by the public of any city facility must be made readily available to the public.

95 Acts, ch 21, §1
Section amended

CHAPTER 400

CIVIL SERVICE

400.1 Appointment of commission.

In cities having a population of eight thousand or over, having a paid fire department or a paid police department, the mayor, one year after each regular municipal election, with the approval of the council, shall appoint three civil service commissioners who shall hold office, one until the first Monday in April of the second year, one until the first Monday in April of the fourth year, and one until the first Monday in April of the sixth year after such appointment, whose successors shall be appointed for a term of six years.

In cities having a population of more than one hundred thousand, the city council may establish, by ordinance, the number of civil service commissioners at not less than three.

For the purpose of determining the population of a city under this section, the federal census conducted in 1980 shall be used. This paragraph is void effective July 1, 2001.

95 Acts, ch 114, §3
Unnumbered paragraph 1 amended

CHAPTER 403

URBAN RENEWAL

403.15 Agency created.

1. There is hereby created in each municipality a public body corporate and politic to be known as the "urban renewal agency" of the municipality: Provided, that such agency shall not transact any business or exercise its powers hereunder until or unless the local governing body has made the finding prescribed in section 403.4, and has elected to have the urban renewal project powers exercised by an urban renewal agency as provided in section 403.14.

2. If the urban renewal agency is authorized to transact business and exercise powers pursuant to this chapter, the mayor or chairperson of the board, as applicable, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency, which board shall consist of five commissioners. In cities having a population of more than one hundred thousand, the city council may establish, by ordinance, the number of commissioners at not less than five. The term of office of each such commissioner shall be one year.

3. A commissioner shall receive no compensation for services, but shall be entitled to the necessary expenses, including traveling expenses, incurred in

the discharge of the commissioner's duties. Each commissioner shall hold office until a successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

4. The powers of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency, and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number. Any persons may be appointed as commissioners if they reside within the area of operation of the agency, which area shall be conterminous with the area of operation of the municipality, and if they are otherwise eligible for such appointments under this chapter.

5. The mayor or chairperson of the board, as applicable, shall designate a chairperson and vice chairperson from among the commissioners. An agency may employ an executive director, technical

experts and such other agents and employees, permanent and temporary, as it may require, and the agency may determine their qualifications, duties and compensation. For such legal service as it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this chapter shall file, with the local governing body, on or before September 30 of each year, a report of its activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expense as of the end of such fiscal year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the city or county, as

applicable, a notice to the effect that such report has been filed with the municipality, and that the report is available for inspection during business hours in the office of the city clerk or county auditor, as applicable, and in the office of the agency.

6. For inefficiency, or neglect of duty, or misconduct in office, a commissioner may be removed only after a hearing, and after the commissioner shall have been given a copy of the charges at least ten days prior to such hearing, and after the commissioner shall have had an opportunity to be heard in person or by counsel.

95 Acts, ch 114, §4
Subsection 2 amended

CHAPTER 403A

MUNICIPAL HOUSING PROJECTS

403A.5 Exercise of municipal housing powers — municipal housing agency.

Any municipality may create, in such municipality, a public body corporate and politic to be known as the "Municipal Housing Agency" of such municipality except that such agency shall not transact any business or exercise its powers hereunder until or unless the local governing body has elected to exercise its municipal housing powers through such an agency as prescribed in this section.

If the municipal housing agency is authorized to transact business and exercise powers hereunder, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the municipal housing agency which board shall consist of five commissioners. The term of office for three of the commissioners originally appointed shall be two years and the term of office for two of the commissioners originally appointed shall be one year. Thereafter the term of office for each commissioner shall be two years. In cities having a population of more than one hundred thousand, the city council may establish, by ordinance, the number of commissioners at not less than five.

A commissioner shall receive no compensation for services, but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of a duty. Each commissioner shall hold office until a successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality, and the certificate shall be conclusive evidence of the due and proper appointment of the commissioner.

The powers of a municipal housing agency shall be exercised by the commissioners. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency, and for all other purposes. Action may be taken by the agency upon a vote of a majority

of the commissioners present, unless in any case the bylaws shall require a larger number. Any persons may be appointed as commissioners if they reside within the area of operation of the agency, which area shall be coterminous with the area of operation of the municipality, and if they are otherwise eligible for appointments under this chapter.

The mayor shall designate a chairperson and vice chairperson from among the commissioners. An agency may employ an executive director, technical experts and such other agents and employees, permanent and temporary, as it may require, and the agency may determine their qualifications, duties and compensation. For such legal service as it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this chapter shall file, with the local governing body, on or before September 30 of each year, a report of its activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expense as of the end of such fiscal year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality, and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.

For inefficiency, or neglect of duty, or misconduct in office, a commissioner may be removed by a majority vote of the governing body of the municipality only after a hearing before the body, and after the commissioner shall have been given a copy of the charges at least ten days prior to such hearing, and after the commissioner shall have had an opportunity to be heard in person or by counsel.

A municipality may itself exercise the powers in connection with municipal housing as defined in this chapter, or may, if the local governing body by reso-

lution determines such action to be in the public interest, elect to have such powers exercised by the municipal housing agency, if one exists or is subsequently established in the community. In the event the local governing body makes such determination, the municipal housing agency shall be vested with all of the municipal housing project powers in the same manner as though all such powers were conferred on such agency instead of the municipality. If the local governing body does not elect to make such determination, the municipality in its discretion may exercise its municipal housing project powers through a board or commissioner, or through such officers of the

municipality as the local governing body may by resolution determine.

A municipality or a "Municipal Housing Agency" may not proceed with a housing project until a study or a report and recommendation on housing available within the community is made public by the municipality or agency and is included in its recommendations for a housing project. Recommendations must receive majority approval from the local governing body before proceeding on the housing project.

95 Acts, ch 114, §5

Unnumbered paragraph 2 amended

CHAPTER 411

RETIREMENT SYSTEM FOR POLICE OFFICERS AND FIRE FIGHTERS

411.36 Board of trustees for statewide system.

1. A board of trustees for the statewide fire and police retirement system is created. The board shall consist of thirteen members, including nine voting members and four nonvoting members. The voting members shall be as follows:

a. Two fire fighters from different participating cities, one of whom is an active member of the retirement system and one of whom is a retired member. The fire fighters shall be appointed by the governing body of the Iowa association of professional fire fighters.

b. Two police officers from different participating cities, one of whom is an active member of the retirement system and one of whom is a retired member. The police officers shall be appointed by the governing body of the Iowa state police association.

c. The city treasurers of four participating cities, one of whom is from a city having a population of less than forty thousand, and three of whom are from cities having a population of forty thousand or more. The city treasurers shall be appointed by the governing body of the Iowa league of cities.

d. One citizen who does not hold another public office. The citizen shall be appointed by the other members of the board.

The nonvoting members of the board shall be two state representatives, one appointed by the speaker of the house of representatives and one by the minority leader of the house, and two state senators, one appointed by the majority leader of the senate and one by the minority leader of the senate.

2. Except as otherwise provided for the initial appointments, the voting members shall be appointed for four-year terms, and the nonvoting members shall be appointed for two-year terms. Terms begin on May 1 in the year of appointment and expire on April 30 in the year of expiration.

3. Vacancies shall be filled in the same manner as original appointments. A vacancy shall be filled for the unexpired term.

4. The board shall elect a chairperson from among its own members.

5. *a.* Members of the board shall be paid their actual and necessary expenses incurred in the performance of their duties and shall receive a per diem as specified in section 7E.6 for each day of service. Per diem and expenses shall be paid to voting members from the fire and police retirement fund created in section 411.8.

b. A participating city shall allow an employee who is a member of the board to attend all meetings of the board. In their capacity as members of the board, which is an instrumentality of political subdivisions of the state, members of the board shall be deemed to be jointly serving the members of the system and the participating cities. The members of the board shall perform their duties in the best interest of the system. Board members who are employees of participating cities shall be allowed to attend board meetings without being required to use paid leave. Costs incurred by a board member which are associated with having a replacement perform the member's other duties for the participating city while serving in the capacity of a member of the board may be considered a necessary expense of the system.

c. Per diem and expenses of the legislative members shall be paid from the funds appropriated under section 2.12. However, legislative members shall not be paid pursuant to this section when the general assembly is actually in session at the seat of government.

6. A member, employee, and the secretary of the board of trustees are not personally liable for claims based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct, or for a transaction from which the person derives an improper personal benefit, even if the acts or omissions violate the standards established in section 411.7, subsection 2.

95 Acts, ch 3, §5

Subsection 1, paragraph c amended

CHAPTER 420

SPECIAL CHARTER CITIES

420.239 Certificate of redemption.

The treasurer, collector, or person authorized to receive the same, upon application of any party to redeem real property sold as aforesaid, and being satisfied that such person has a right to redeem the same, and on payment of the proper amount, shall issue to such party a certificate of redemption, in

substance and form as provided for the redemption of property sold for state and county taxes, which redemption shall thereupon be deemed complete without further proceedings.

95 Acts, ch 91, §1
Section amended

CHAPTER 421

DEPARTMENT OF REVENUE AND FINANCE

421.1 State board of tax review.

There is hereby established within the department of revenue and finance for administrative and budgetary purposes a state board of tax review for the state of Iowa. The state board of tax review, hereinafter called the state board, shall consist of three members.

The members of the state board shall be registered voters of the state and shall hold no other elective or appointive public office.

Members of the state board shall serve for six-year staggered terms beginning and ending as provided by section 69.19. A member who is appointed for a six-year term shall not be permitted a successive term.

Members shall be appointed by the governor subject to confirmation by the senate. Appointments to the board shall be bipartisan.

The members of the state board shall qualify by taking the regular oath of office as prescribed by law for state officers. A vacancy on the board shall be filled by appointment by the governor in the same manner as the original appointment.

The members of the state board shall be allowed their necessary travel and expenses while engaged in their official duties. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. They shall organize the board and select one of their members as chairperson.

The place of office of the state board shall be in the office of the tax department in the capitol of the state.

The state board shall hold at least six regular meetings each year, the first of which shall be on the second secular day of July. Special meetings of the state board may be called by the chairperson on five days' notice given to each member. All meetings shall be held at the office of the tax department unless a different place within the state is designated by the state board or in the notice of the meeting.

It shall be the responsibility of the state board to exercise the following general powers and duties:

1. Determine and adopt such policies as are au-

thorized by law and are necessary for the more efficient operation of any phase of tax review.

2. Perform such duties prescribed by law as it may find necessary for the improvement of the state system of taxation in carrying out the purposes and objectives of the tax laws.

3. Employ, pursuant to the Iowa merit system, adequate clerical help to keep such records as are necessary to set forth clearly all actions and proceedings of the state board.

4. Advise and counsel with the director of revenue and finance concerning the tax laws and the rules adopted pursuant to the law; and, upon its own motion or upon appeal by any affected taxpayer, review the record evidence and the decisions of, and any orders or directive issued by, the director of revenue and finance for the identification of taxable property, classification of property as real or personal, or for assessment and collection of taxes by the department or an order to reassess or to raise assessments to any local assessor, and shall affirm, modify, reverse, or remand them within sixty days from the date the case is submitted to the board for decision. For an appeal to the board to be valid, written notice must be given to the department within thirty days of the rendering of the decision, order, or directive from which the appeal is taken. The director shall certify to the board the record, documents, reports, audits, and all other information pertinent to the decision, order, or directive from which the appeal is taken.

The affected taxpayer and the department shall be given at least fifteen days' written notice by the board of the date the appeal shall be heard and both parties may be present at such hearing if they desire. The board shall adopt and promulgate, pursuant to chapter 17A, rules for the conduct of appeals by the board. The record and all documents, reports, audits and all other information certified to the board by the director, and hearings held by the board pursuant to the appeal and the decision of the board thereon shall be open to the public notwithstanding the provisions of

sections 422.72, subsection 1, and 422.20; except that the board upon the application of the affected taxpayer may order the record and all documents, reports, audits, and all other information certified to it by the director, or so much thereof as it deems necessary, held confidential, if the public disclosure of same would reveal trade secrets or any other confidential information that would give the affected taxpayer's competitor a competitive advantage. Any deliberation of the board in reaching a decision on any appeal shall be confidential.

5. Adopt a long-range program for the state system of tax reform based upon special studies, surveys, research, and recommendations submitted by or proposed under the direction of the director of revenue and finance.

The state board shall constitute a continuing research commission as to tax matters in the state and cause to be prepared and submitted to each regular session of the general assembly a report containing such recommendations as to revisions, amendments, and new provisions of the law as the state board has decided should be submitted to the legislature for its consideration.

6. All of the provisions of section 422.70 shall also be applicable to the state board of tax review.

95 Acts, ch 49, §12

Unnumbered paragraph 2 amended

421.10 Appeal period — applicability.

The appeal period for revision of assessment of tax, interest, and penalties set out under section 422.28, 422.54, 452A.64, 453A.29, or 453A.46 applies to appeals to notices from the department denying changes in filing methods, denying refund claims, and denying portions of refund claims for the tax covered by that section, and notices of any department action directed to a specific taxpayer, other than licensing, which involves a calculation.

95 Acts, ch 83, §1

Section amended

421.17 Powers and duties of director.

In addition to the powers and duties transferred to the director of revenue and finance, the director shall have and assume the following powers and duties:

1. To have and exercise general supervision over the administration of the assessment and tax laws of the state, over boards of supervisors and all other officers or boards in the performance of their official duties in all matters relating to assessments and taxation, to the end that all assessments of property and taxes levied on the property be made relatively just and uniform in substantial compliance with the law.

2. To supervise the activity of all assessors and boards of review in the state of Iowa; to co-operate with them in bringing about a uniform and legal assessment of property as prescribed by law.

The director may order the reassessment of all or part of the property in any assessing jurisdiction in any year. Such reassessment shall be made by the

local assessor according to law under the direction of the director and the cost of making the assessment shall be paid in the same manner as the cost of making an original assessment.

The director shall determine the degree of uniformity of valuation as between the various assessing jurisdictions of the state and shall have the authority to employ competent personnel for the purpose of performing this duty.

For the purpose of bringing about uniformity and equalization of assessments throughout the state of Iowa, the director shall prescribe rules relating to the standards of value to be used by assessing authorities in the determination, assessment and equalization of actual value for assessment purposes of all property subject to taxation in the state, and such rules shall be adhered to and followed by all assessing authorities.

3. To prescribe and promulgate all forms of books and forms to be used in the listing and assessment of property, and on or before November 1 of each year shall furnish to the county auditor of each county such prescribed forms of assessment rolls and other forms to properly list and assess all property subject to taxation in each county. The department of revenue and finance shall also from time to time prepare and furnish in like manner forms for any and all other blanks, memoranda or instructions which the director deems necessary or expedient for the use or guidance of any of the officers over which the director is authorized by law to exercise supervision.

4. To confer with, advise, and direct boards of supervisors, boards of review, and others obligated by law to make levies and assessments, as to their duties under the laws.

5. To direct proceedings, actions, and prosecutions to be instituted for the enforcement of the laws relating to the penalties, liabilities, and punishment of public officers, and officers or agents of corporations, and other persons or corporations, for failure or neglect to comply with the provisions of the statutes governing the return, assessment and taxation of property; to make or cause to be made complaints against members of boards of review, boards of supervisors or other assessing, reviewing, or taxing officers for official misconduct or neglect of duty. Employees of the department of revenue and finance shall not during their regular hours of employment engage in the preparation of tax returns, except in connection with a regular audit of a tax return or in connection with assistance requested by the taxpayer.

6. To require city, township, school districts, county, state, or other public officers to report information as to the assessment of property and collection of taxes and such other information as may be needful or desirable in the work of the department in such form and upon such blanks as the director may prescribe.

The director shall require all city and county assessors to prepare a quarterly report in the manner and form to be prescribed by the director showing for each warranty deed or contract of sale of real estate,

divided between rural and urban, during the last completed quarter the amount of real property transfer tax, the sale price or consideration, and the equalized value at which that property was assessed that year. This report with further information required by the director shall be submitted to the department within sixty days after the end of each quarter. The department shall prepare annual summaries of the records of the ratio of assessments to actual sales prices for all counties, and for cities having city assessors, and the information for the preceding year shall be available for public inspection by May 1.

7. To hold public hearings either at the seat of government or elsewhere in the state, and tax the costs thereof; to summon and compel witnesses to appear and give testimony, to administer oaths to said witnesses, and to compel said witnesses to produce for examination records, books, papers, and documents relating to any matter which the director shall have the authority to investigate or determine. Provided, however, that no bank or trust company or its officers or employees shall be required to divulge knowledge concerning the property of any person when such knowledge was obtained through information imparted as a part of a business transaction with or for such person and in the usual and ordinary course of business of said bank or trust company, and was necessary and proper to the discharge of the duty of said bank or trust company in relation to such business transaction. This proviso shall be additional to other provisions of the law relating to confidential and privileged communications.

8. To cause the depositions of witnesses residing within or without the state, or absent therefrom, to be taken either on written or oral interrogatories, and the clerk of the district court of any county shall upon the order of the director issue a commission for the taking of such depositions. The proceedings therefor shall be the same as the proceedings for the taking of depositions in the district court so far as applicable.

9. To investigate the work and methods of boards of review, boards of supervisors, or other public officers, in the assessment, equalization, and taxation of all kinds of property, and for that purpose the director or employees of the department may visit the counties or localities when deemed necessary so to do.

10. To require any board of review at any time after its adjournment to reconvene and to make such orders as the director shall determine are just and necessary; to direct and order any board of review to raise or lower the valuation of the property, real or personal, in any township, city, or taxing district, to order and direct any board of review to raise or lower the valuation of any class or classes of property in any township, city, or taxing district, and generally to make any order or direction to any board of review as to the valuation of any property, or any class of property, in any township, city, county, or taxing district, which in the judgment of the director may seem just and necessary, to the end that all property shall be valued and assessed in the manner and according to the real intent of the law. For the purpose of this

paragraph the words "*taxing district*" include drainage districts and levee districts.

The director may correct obvious errors or obvious injustices in the assessment of any individual property, but the director shall not reduce the valuation of any individual property except upon the recommendation of the local board of review and an order of the director affecting any valuation shall not be retroactive as to any reduction or increase in taxes payable prior to January 1 of the year in which that order is issued, or prior to September 1 of the preceding year in cities under special charter which collect their own municipal levies. The director shall not correct errors or injustices under the authority of this paragraph if that correction would involve the exercise of judgment. Judicial review of the actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act.

The director may order made effective reassessments or revaluations in any taxing district for any taxing year or years and the director may in any year order uniform increases or decreases in valuation of all property or upon any class of property within any taxing district or any area within such taxing district, such orders to be effective in the year specified by the director. For the purpose of this paragraph the words "*taxing district*" include drainage districts and levee districts.

11. To carefully examine into all cases where evasion or violation of the law for assessment and taxation of property is alleged, complained of, or discovered, and to ascertain wherein existing laws are defective or are improperly or negligently administered, and cause to be instituted such proceedings as will remedy improper or negligent administration of the laws relating to the assessment or taxation of property.

12. To make a summary of the tax situation in the state, setting out the amount of moneys raised by both direct and indirect taxation; and also to formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation. To recommend such additions to and changes in the present system of taxation that in the director's judgment are for the best interest of the state and will eliminate the necessity of any levy for state purposes.

13. To transmit biennially to the governor and to each member and member-elect of the legislature, thirty days before the meeting of the legislature, the report of the director, covering the subject of assessment and taxation, the result of the investigation of the director, recommendations for improvement in the system of taxation in the state, together with such measures as may be formulated for the consideration of the legislature.

14. To publish in pamphlet form the revenue laws of the state and distribute them to the county auditors, assessors, and boards of review.

15. Reserved.

16. To call upon any state department or institution for technical advice and data which may be of

value in connection with the work of assessment and taxation.

17. Reserved.

18. To prepare and issue a state appraisal manual which each county and city assessor shall use in assessing and valuing all classes of property in the state. The appraisal manual shall be continuously revised and the manual and revisions shall be issued to the county and city assessors in such form and manner as prescribed by the director.

19. To issue rules as are necessary, subject to the provisions of chapter 17A, to provide for the uniform application of the exemptions provided in section 427.1 in all assessor jurisdictions in the state.

20. To subpoena from property owners and taxpayers any and all records and documents necessary to assist the department in the determination of the fair market value of industrial real estate. The burden of showing reasonable cause to believe that the documents or records sought by the subpoena are necessary to assist the department under this subsection shall be upon the director.

The provisions of sections 17A.10 to 17A.18 relating to contested cases shall not apply to any matters involving the equalization of valuations of classes of property as authorized by this chapter and chapter 441. This exemption shall not apply to a hearing before the state board of tax review.

21. To establish and maintain a procedure to set off against a debtor's income tax refund or rebate any debt, which is assigned to the department of human services, which the child support recovery unit is attempting to collect on behalf of an individual not eligible as a public assistance recipient, or which the foster care recovery unit of the department of human services is attempting to collect on behalf of a child receiving foster care provided by the department of human services.

a. This includes any of the following:

(1) Any debt which has accrued through written contract, subrogation, or court judgment and which is in the form of a liquidated sum due and owing for the care, support or maintenance of a child.

(2) Any debt which has accrued through a court judgment which is due and owing as a support obligation for the debtor's spouse or former spouse when enforced in conjunction with a child support obligation.

(3) Any debt which is owed to the state for public assistance overpayments to recipients or to providers of services to recipients which the investigations division of the department of inspections and appeals is attempting to collect on behalf of the state. For purposes of this subsection, "public assistance" means assistance under the family investment program, medical assistance, food stamps, foster care, and state supplementary assistance.

b. The procedure shall meet the following conditions:

(1) Before setoff all outstanding tax liabilities collectible by the department of revenue and finance shall be satisfied except that no portion of a refund

or rebate shall be credited against tax liabilities which are not yet due.

(2) Before setoff the child support recovery unit established pursuant to section 252B.2, the foster care recovery unit and the investigations division of the department of inspections and appeals shall obtain and forward to the department of revenue and finance the full name and social security number of the debtor. The department of revenue and finance shall co-operate in the exchange of relevant information with the child support recovery unit as provided in section 252B.9, with the foster care recovery unit, and with the investigations division of the department of inspections and appeals. However, only relevant information required by the child support unit, by the foster care recovery unit, or by the investigations division of the department of inspections and appeals shall be provided by the department of revenue and finance. The information shall be held in confidence and shall be used for purposes of setoff only.

(3) The child support recovery unit, the foster care recovery unit, and the investigations division of the department of inspections and appeals shall, at least annually, submit to the department of revenue and finance for setoff the debts described in this subsection, which are at least fifty dollars, on a date to be specified by the department of human services and the department of inspections and appeals by rule.

(4) Upon submission of a claim the department of revenue and finance shall notify the child support recovery unit, the foster care recovery unit, or the investigations division of the department of inspections and appeals as to whether the debtor is entitled to a refund or rebate and if so entitled shall notify the unit or division of the amount of the refund or rebate and of the debtor's address on the income tax return.

(5) Upon notice of entitlement to a refund or rebate the child support recovery unit, the foster care recovery unit, or the investigations division of the department of inspections and appeals shall send written notification to the debtor, and a copy of the notice to the department of revenue and finance, of the unit's or division's assertion of its rights, or the rights of the department of human services, or the rights of an individual not eligible as a public assistance recipient to all or a portion of the debtor's refund or rebate and the entitlement to recover the debt through the setoff procedure, the basis of the assertion, the opportunity to request that a joint income tax refund or rebate be divided between spouses, the debtor's opportunity to give written notice of intent to contest the claim, and the fact that failure to contest the claim by written application for a hearing will result in a waiver of the opportunity to contest the claim, causing final setoff by default. Upon application filed with the department of human services within fifteen days from the mailing of the notice of entitlement to a refund or rebate, the department of human services shall grant a hearing pursuant to chapters 10A and 17A. An appeal taken

from the decision of an administrative law judge and subsequent appeals shall be taken pursuant to chapter 17A.

(6) Upon the request of a debtor or a debtor's spouse to the child support recovery unit, the foster care recovery unit, or the investigations division of the department of inspections and appeals, filed within fifteen days from the mailing of the notice of entitlement to a refund or rebate, and upon receipt of the full name and social security number of the debtor's spouse, the unit or division shall notify the department of revenue and finance of the request to divide a joint income tax refund or rebate. The department of revenue and finance shall upon receipt of the notice divide a joint income tax refund or rebate between the debtor and the debtor's spouse in proportion to each spouse's net income as determined under section 422.7.

(7) The department of revenue and finance shall, after notice has been sent to the debtor by the child support recovery unit, the foster care recovery unit, or the investigations division of the department of inspections and appeals, set off the debt against the debtor's income tax refund or rebate. However, if a debtor has made all current child support or foster care payments in accordance with a court order or an assessment of foster care liability for the twelve months preceding the proposed setoff and has regularly made delinquent child support or foster care payments during those twelve months, the child support or foster care recovery unit shall notify the department of revenue and finance not to set off the debt against the debtor's income tax refund or rebate. If a debtor has made all current repayment of public assistance in accordance with a court order or voluntary repayment agreement for the twelve months preceding the proposed setoff and has regularly made delinquent payments during those twelve months, the investigations division of the department of inspections and appeals shall notify the department of revenue and finance not to set off the debt against the debtor's income tax refund or rebate. The department of revenue and finance shall refund any balance of the income tax refund or rebate to the debtor. The department of revenue and finance shall periodically transfer the amount set off to the child support recovery unit, the foster care recovery unit, or the investigations division of the department of inspections and appeals. If the debtor gives timely written notice of intent to contest the claim the department of revenue and finance shall hold the refund or rebate until final disposition of the contested claim pursuant to chapter 17A or by court judgment. The child support recovery unit, the foster care recovery unit, or the investigations division of the department of inspections and appeals shall notify the debtor in writing upon completion of setoff.

21A. To cooperate with the child support recovery unit created in chapter 252B to establish and maintain a process to implement the provisions of section 252B.5, subsection 8. The department of revenue and finance shall forward to individuals meeting the cri-

teria under section 252B.5, subsection 8, paragraph "a", a notice by first-class mail that the individual is obligated to file a state estimated tax form and to remit a separate child support payment.

a. Individuals notified shall submit a state estimated tax form on a quarterly basis.

b. The individual shall pay monthly, the lesser of the total delinquency or one hundred fifty percent of the current or most recent monthly obligation.

c. The individual shall remit the payment to the department of revenue and finance separate from any tax liability payments, identify the payment as a support payment, and make the payment payable to the collection services center. The department shall forward all payments received pursuant to this section to the collection services center established pursuant to chapter 252B, for processing and disbursement. The department of revenue and finance may establish a process for the child support recovery unit or collection services center to directly receive the payments. For purposes of crediting the support payments pursuant to sections 252B.14 and 598.22, payments received by the department of revenue and finance and forwarded to the collection services center shall be credited as if received directly by the collection services center.

d. The notice shall provide that, as an alternative to the provisions of paragraph "b", the individual may contact the child support recovery unit to formalize a repayment plan and obtain an exemption from the quarterly filing requirement when payments are made pursuant to the repayment plan or to contest the balance due listed in the notice.

e. The department of revenue and finance, in cooperation with the child support recovery unit, may adopt rules, if necessary, to implement this subsection.

21B. To provide information contained in state individual tax returns to the child support recovery unit for the purposes of establishment or enforcement of support obligations. The department of revenue and finance and child support recovery unit may exchange information in a manual or automated fashion. The department of revenue and finance, in cooperation with the child support recovery unit, may adopt rules, if necessary, to implement this subsection.

22. To employ collection agencies, within or without the state, to collect delinquent taxes, including penalties and interest, administered by the department or delinquent accounts, charges, loans, fees or other indebtedness due the state or any state agency, that have formal agreements with the department for central debt collection where the director finds that departmental personnel are unable to collect the delinquent accounts, charges, loans, fees, or other indebtedness because of a debtor's location outside the state or for any other reason. Fees for services, reimbursement, or other remuneration, including attorney fees, paid to collection agencies shall be based upon the amount of tax, penalty, and interest or debt actually collected and shall be paid only after

the amount of tax, penalty, and interest or debt is collected. All funds collected must be remitted in full to the department within thirty days from the date of collection from a debtor or in a lesser time as the director prescribes. The funds shall be applied toward the debtor's account and handled as are funds received by other means. An amount is appropriated from the amount of tax, penalty, and interest, delinquent accounts, charges, loans, fees, or other indebtedness actually collected by the collection agency sufficient to pay all fees for services, reimbursement, or other remuneration pursuant to a contract with a collection agency under this subsection. A collection agency entering into a contract with the department for the collection of delinquent taxes, penalties, and interests, delinquent accounts, charges, loans, fees, or other indebtedness pursuant to this subsection is subject to the requirements and penalties of the confidentiality laws of this state regarding tax or indebtedness information.

23. To establish and maintain a procedure to set off against a defaulter's income tax refund or rebate the amount that is due because of a default on a guaranteed student or parental loan under chapter 261. The procedure shall meet the following conditions:

a. Before setoff all outstanding tax liabilities collectible by the department of revenue and finance shall be satisfied except that a refund or rebate shall not be credited against tax liabilities which are not yet due.

b. Before setoff the college student aid commission shall obtain and forward to the department of revenue and finance the full name and social security number of the defaulter. The department of revenue and finance shall cooperate in the exchange of relevant information with the college student aid commission.

c. The college student aid commission shall, at least annually, submit to the department of revenue and finance for setoff the guaranteed student loan defaults, which are at least fifty dollars, on a date or dates to be specified by the college student aid commission by rule.

d. Upon submission of a claim, the department of revenue and finance shall notify the college student aid commission whether the defaulter is entitled to a refund or rebate of at least fifty dollars and if so entitled shall notify the commission of the amount of the refund or rebate and of the defaulter's address on the income tax return. Section 422.72, subsection 1, does not apply to this paragraph.

e. Upon notice of entitlement to a refund or rebate, the college student aid commission shall send written notification to the defaulter, and a copy of the notice to the department of revenue and finance, of the commission's assertion of its rights to all or a portion of the defaulter's refund or rebate and the entitlement to recover the amount of the default through the setoff procedure, the basis of the assertion, the defaulter's opportunity to request that a joint income tax refund or rebate be divided between

spouses, the defaulter's opportunity to give written notice of intent to contest the claim, and the fact that failure to contest the claim by written application for a hearing before a specified date will result in a waiver of the opportunity to contest the claim, causing final setoff by default. Upon application, the commission shall grant a hearing pursuant to chapter 17A. An appeal taken from the decision of an administrative law judge and any subsequent appeals shall be taken pursuant to chapter 17A.

f. Upon the timely request of a defaulter or a defaulter's spouse to the college student aid commission and upon receipt of the full name and social security number of the defaulter's spouse, the commission shall notify the department of revenue and finance of the request to divide a joint income tax refund or rebate. The department of revenue and finance shall upon receipt of the notice divide a joint income tax refund or rebate between the defaulter and the defaulter's spouse in proportion to each spouse's net income as determined under section 422.7.

g. The department of revenue and finance shall, after notice has been sent to the defaulter by the college student aid commission, set off the amount of the default against the defaulter's income tax refund or rebate if both the amount of the default and the refund or rebate are at least fifty dollars. The department shall refund any balance of the income tax refund or rebate to the defaulter. The department of revenue and finance shall periodically transfer the amount set off to the college student aid commission. If the defaulter gives written notice of intent to contest the claim, the commission shall hold the refund or rebate until final disposition of the contested claim pursuant to chapter 17A or by court judgment. The commission shall notify the defaulter in writing upon completion of setoff.

24. To enter into reciprocal agreements with the departments of revenue of other states that have enacted legislation, that is substantially equivalent to the setoff procedure in subsection 23. A reciprocal agreement shall also be approved by the college student aid commission. The agreement shall authorize the department to provide by rule for the setoff of state income tax refunds or rebates of defaulters from states with which Iowa has a reciprocal agreement and to provide for sending lists of names of Iowa defaulters to the states with which Iowa has a reciprocal agreement for setoff of that state's income tax refunds.

25. To establish and maintain a procedure to set off against a debtor's income tax refund or rebate any debt which is in the form of a liquidated sum due, owing, and payable to the clerk of the district court. The procedure shall meet the following conditions:

a. Before setoff all outstanding tax liabilities collectible by the department shall be satisfied except that no portion of a refund or rebate shall be credited against tax liabilities which are not yet due.

b. Before setoff the clerk of the district court shall obtain and forward to the department the full name

and social security number of the debtor. The department shall cooperate in the exchange of relevant information with the clerk of the district court. However, only relevant information required by the clerk of the district court shall be provided by the department. The information shall be held in confidence and shall be used for purposes of setoff only.

c. The clerk of the district court, on the first day of February and August of each calendar year, shall submit to the department for setoff the debts described in this subsection, which are at least fifty dollars.

d. Upon submission of a claim the department shall send written notification to the debtor or the clerk of the district court's assertion of rights to all or a portion of the debtor's refund or rebate and the entitlement to recover the debt through the setoff procedure, the basis of the assertion, the opportunity to request that a joint income tax refund or rebate be divided between spouses, and the debtor's opportunity to give written notice of intent to contest the amount of the claim.

e. Upon the request of a debtor or a debtor's spouse to the department, filed within fifteen days from the mailing of the notice of entitlement to a refund or rebate, and upon receipt of the full name and social security number of the debtor's spouse, the department shall divide a joint income tax refund or rebate between the debtor and the debtor's spouse in proportion to each spouse's net income as determined under section 422.7.

f. The department shall set off the debt, plus a fee established by rule to reflect the cost of processing, against the debtor's income tax refund or rebate. The department shall transfer ninety percent of the amount set off to the treasurer of state for deposit in the general fund of the state. The remaining ten percent shall be remitted to the judicial department and used to defray the costs of this procedure. If the debtor gives timely written notice of intent to contest the amount of the claim, the department shall hold the refund or rebate until final determination of the correct amount of the claim.

g. The department shall file with the clerk of the district court a notice of the satisfaction of each obligation to the full extent of all moneys collected in satisfaction of the obligation. The clerk shall record the notice and enter a satisfaction for the amounts collected.

26. To provide that in the case of multiple claims to payments filed under subsections 21, 23, 25, and 29 that priority shall be given to claims filed by the child support recovery unit or the foster care recovery unit under subsection 21, next priority shall be given to claims filed by the college student aid commission under subsection 23, next priority shall be given to claims filed by the investigations division of the department of inspections and appeals under subsection 21, next priority shall be given to claims filed by a clerk of the district court under subsection 25, and last priority shall be given to claims filed by other state agencies under subsection 29. In the case of

multiple claims under subsection 29, priority shall be determined in accordance with rules to be established by the director.

27. Administer chapter 99E.

28. Assume the accounting functions of the state comptroller's office.

29. To establish and maintain a procedure to set off against any claim owed to a person by a state agency any liability of that person owed to a state agency or a support debt being enforced by the child support recovery unit pursuant to chapter 252B, except the setoff procedures provided for in subsections 21, 23, and 25. The procedure shall only apply when at the discretion of the director it is feasible. The procedure shall meet the following conditions:

a. For purposes of this subsection unless the context requires otherwise:

(1) "State agency" means a board, commission, department, including the department of revenue and finance, or other administrative office or unit of the state of Iowa. The term "state agency" does not include the general assembly, the governor, or any political subdivision of the state, or its offices and units.

(2) "Department" means the department of revenue and finance.

(3) The term "person" does not include a state agency.

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

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

d. Before setoff, a state agency shall, at least annually, submit to the department the information required by paragraph "c" along with the amount of each person's liability to and the amount of each claim on the state agency. The department may, by rule, require more frequent submissions.

e. Before setoff, the amount of a person's claim on a state agency and the amount of a person's liability to a state agency shall be at least fifty dollars.

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

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

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

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

i. The department shall, after the state agency has sent notice to the person liable, set off the amount owed to the agency against any amount which a state agency owes that person. The department shall refund any balance of the amount to the person. The department shall periodically transfer amounts set off to the state agencies entitled to them. If a person liable to a state agency gives written notice of intent to contest an allegation, a state agency shall hold a refund or rebate until final disposition of the allegation. Upon completion of the setoff, a state agency shall notify in writing the person who was liable.

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

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

31. At the director's discretion, accept payment of taxes, penalties, interest, and fees, or any portion thereof, by credit card. The director may adjust the payable amount to reflect the costs of processing the payment as determined by the treasurer of state and the payment by credit card shall include, in addition to all other charges, any discount charged by the credit card issuer.

32. To ensure that persons employed under contract, other than officers or employees of the state, who provide assistance in administration of tax laws

and who are directly under contract or who are involved in any way with work under the contract and who have access to confidential information are subject to applicable requirements and penalties of tax information confidentiality laws of the state regarding all tax return, return information, or investigative or audit information that may be required to be divulged in order to carry out the duties specified under the contract.

33. a. To develop and administer an indirect cost allocation system for state agencies. The system shall be based upon standard cost accounting methodologies and shall be used to allocate both direct and indirect costs of state agencies or state agency functions in providing centralized services to other state agencies. A cost that is allocated to a state agency pursuant to this system shall be billed to the state agency and the cost is payable to the general fund of the state. The source of payment for the billed cost shall be any revenue source except for the general fund of the state. If a state agency is authorized by law to bill and recover direct expenses, the state agency shall recover indirect costs in the same manner.

b. For the purposes of this subsection, "state agency" means a board, commission, department, including the department of revenue and finance, or other administrative office, institution, bureau, or unit of the state of Iowa. The term "state agency" does not include the general assembly, the governor, the courts, or any political subdivision of the state, or its offices and units.

34. a. To establish, administer, and make available a centralized debt collection capability and procedure for the use by any state agency as defined in subsection 29 to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to or being collected by the state. The department's collection facilities shall only be available for use by other state agencies for their discretionary use when resources are available to the director and subject to the director's determination that use of the procedure is feasible. The director shall prescribe the appropriate form and manner in which this information is to be submitted to the office of the department. The obligations or indebtedness must be delinquent and not subject to litigation, claim, appeal, or review pursuant to the appropriate remedies of each state agency.

b. The director shall establish, as provided in this section, a centralized computer data bank to compile the information provided and shall establish in the centralized data bank all information provided from all sources within the state concerning addresses, financial records, and other information useful in assisting the department in collection services.

c. The director shall establish a formal debt collection policy for use by state agencies which have not established their own policy. Other state agencies may use the collection facilities of the department pursuant to formal agreement with the department. The agreement shall provide that the information provided to the department shall be sufficient to

establish the obligation in a court of law and to render it as a legal judgment on behalf of the state. After transferring the file to the department for collection, an individual state agency shall terminate all collection procedures and be available to provide assistance to the department. Upon receipt of the file, the department shall assume all liability for its actions without recourse to the agency, and shall comply with all applicable state and federal laws governing collection of the debt. The department has the powers granted in this section regarding setoff from income tax refunds or other accounts payable by the state for any of the obligations transferred by state agencies.

d. The department's existing right to credit against tax due shall not be impaired by any right granted to, or duty imposed upon, the department or other state agency by this section.

e. All state agencies shall be given access, at the discretion of the director, to the centralized computer data bank and, notwithstanding any other provision of law to the contrary, may deny, revoke, or suspend any license or deny any renewal authorized by the laws of this state to any person who has defaulted on an obligation owed to or collected by the state. The confidentiality provisions of sections 422.20 and 422.72 do not apply to tax information contained in the centralized computer data bank. State agencies shall endeavor to obtain the applicant's social security or federal tax identification number, or state driver's license number from all applicants.

f. At the director's discretion, the department may accept payment of debts, interest, and fees, or any portion by credit card. The director may adjust the payable amount to reflect the costs of processing the payment as determined by the treasurer of state and the payment by credit card shall include, in addition to all other charges, any discount charge by the credit card issuer.

g. The director shall adopt administrative rules to implement this section, including, but not limited to, rules necessary to prevent conflict with federal laws and regulations or the loss of federal funds, to establish procedures necessary to guarantee due process of law, and to provide for reimbursement of the department by other state agencies for the department's costs related to debt collection.

h. The director shall report quarterly to the legislative fiscal committee, the legislative fiscal bureau, and the chairpersons and ranking members of the joint administration appropriations subcommittee concerning the implementation of the centralized debt collection program, the number of departmental collection programs initiated, the amount of debts collected, and an estimate of future costs and benefits which may be associated with the collection program. It is the intent of the general assembly that the centralized debt collection program will result in the collection of at least two dollars of indebtedness for every dollar expended in administering the collection program during a fiscal year. It is also the intent of the general assembly that the centralized debt collection program be administered without the antici-

pation of future additional commitments of computer equipment and personnel.

i. The director may distribute for publication the names, addresses, and amounts of indebtedness owed to or being collected by the state if the indebtedness is subject to the centralized debt collection procedure established in this subsection. The director shall adopt rules to implement this paragraph, and the rules shall provide guidelines by which the director shall determine which names, addresses, and amounts of indebtedness may be distributed for publication. The director may distribute information for publication pursuant to this paragraph, notwithstanding sections 422.20, 422.72, and 423.23, or any other provision of state law to the contrary pertaining to confidentiality of information.

95 Acts, ch 169, §4, 5; 95 Acts, ch 194, §7-9
1995 amendments to subsections 25 and 34 effective January 1, 1996; 95 Acts, ch 169, §10; 95 Acts, ch 194, §12
Subsection 25, unnumbered paragraph 1 amended
Subsection 25, paragraph f amended
Subsection 34, paragraphs a and e amended
Subsection 34, NEW paragraph i

421.17A Administrative levy against accounts.

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

a. "*Account*" means "account" as defined in section 524.103, "share account or shares" as defined in section 534.102, or the savings or deposits of a member received or being held by a credit union, or certificates of deposit. "*Account*" also includes deposits held by an agent, a broker-dealer, or an issuer as defined in section 502.102. However, "*account*" does not include amounts held by a financial institution as collateral for loans extended by the financial institution.

b. "*Bank*" means "bank", "insured bank", "private bank",* and "state bank" as these are defined in section 524.103.

c. "*Credit union*" means "credit union" as defined in section 533.51.

d. "*Facility*" means the centralized debt collection facility of the department of revenue and finance established pursuant to section 421.17, subsection 34.

e. "*Financial institution*" includes a bank, credit union, or savings and loan association. "*Financial institution*" also includes an institution which holds deposits for an agent, broker-dealer, or an issuer as defined in section 502.102.

f. "*Obligor*" means a person who is indebted to the state or a state agency for any delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or indebtedness being collected by the state.

g. "*Savings and loan association*" means "association" as defined in section 534.102.

h. "*Working days*" means Monday through Friday, excluding the holidays specified in section 1C.2, subsections 1 through 9.

2. *Purpose and use.*

a. Notwithstanding other statutory provisions which provide for the execution, attachment, or levy

against accounts, the facility may utilize the process established in this chapter to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or being collected by the state provided that any exemptions or exceptions which specifically apply to enforcement of such obligations also apply to this section.

b. An obligor is subject to this section if the obligor's debt is being collected by the facility.

c. Any amount forwarded by a financial institution under this chapter shall not exceed the delinquent or accrued amount of the obligor's debt being collected by the state.

3. *Initial notice to obligor.* The facility may proceed under this section only if notice has been provided to the obligor by regular mail to the last known address of the obligor, notifying the obligor that the obligor is subject to this section. The facility shall give twenty days' notice of its intention to use the levy process. The twenty-day notice period shall not be required if the facility determines that the collection of past due amounts would be jeopardized.

4. *Verification of accounts and immunity from liability.*

a. The facility may contact a financial institution to obtain verification of the account number, the names and social security numbers listed for the account, and the account balance of an account held by an obligor. Contact with a financial institution may be by telephone or by written communication. The financial institution may require positive voice recognition and may require the telephone number of the authorized person from the facility before releasing an obligor's account information by telephone.

b. The financial institution is immune from any civil or criminal liability which might otherwise be incurred or imposed for information released by the financial institution to the facility pursuant to this section.

c. The financial institution or the facility is not liable for the cost of any early withdrawal penalty of an obligor's certificate of deposit.

5. *Administrative levy — notice to financial institution.*

a. If an obligor is subject to this section, the facility may initiate an administrative action to levy against an account of the obligor.

b. The facility shall send a notice to the financial institution with which the account is placed, directing that the financial institution forward all or a portion of the moneys in the obligor's account to the facility.

c. The notice to the financial institution shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to have an account at the financial institution.

(3) A statement that pursuant to the provisions of this section, the obligor's account is subject to seizure and the financial institution is authorized and required to forward moneys to the facility.

(4) The maximum amount that shall be forwarded by the financial institution, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the state by the obligor.

(5) The prescribed time frame which the financial institution must meet in forwarding any amounts.

(6) The address of the facility and the account number utilized by the facility for the obligor.

(7) A telephone number, address, and contact name of the facility initiating the action.

6. *Administrative levy — notice to obligor and other account holders.*

a. The facility may administratively initiate an action to seize one or more accounts of an obligor who is subject to this section and section 421.17, subsection 34.

b. The facility shall notify an obligor subject to this section. The notice shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to have an account at the financial institution.

(3) A statement that pursuant to the provisions of this section, the obligor's account is subject to seizure and the financial institution is authorized and required to forward moneys to the facility.

(4) The maximum amount to be forwarded by the financial institution, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the state by the obligor.

(5) The prescribed time frames the financial institution must meet in forwarding any amounts.

(6) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the obligor.

(7) The address of the facility and the account number utilized by the facility for the obligor.

(8) A telephone number, address, and contact name of the facility initiating the action.

c. The facility shall forward the notice to the obligor by regular mail within two working days of sending the notice to the financial institution pursuant to subsection 5, paragraph "b".

d. The facility shall notify any party known to have an interest in the account. The notice shall contain all of the following:

(1) The name of the obligor.

(2) The name of the financial institution.

(3) A statement that the account in which the party is known to have an interest is subject to seizure.

(4) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the party known to have an interest.

(5) The address of the facility and the name of the obligor who also has an interest in the account.

(6) A telephone number, address, and contact name of the facility initiating the action.

e. The facility shall forward the notice to the party known to have an interest by regular mail

within two working days of sending the notice to the financial institution pursuant to subsection 5, paragraph "b".

7. *Responsibilities of financial institution.* Upon receipt of a notice under subsection 5, paragraph "b", the financial institution shall do all of the following:

a. Immediately encumber funds in any account in which the obligor has an interest to the extent of the debt indicated in the notice from the facility.

b. No sooner than fifteen days, and no later than twenty days from the date the financial institution receives the notice under subsection 5, paragraph "b", unless notified by the facility of a challenge by the obligor or an account holder of interest, forward the moneys encumbered to the facility with the obligor's name and social security number, the facility's account number for the obligor, and any other information required in the notice.

c. The financial institution may assess a fee against the obligor, not to exceed twenty-five dollars, for forwarding of moneys to the facility. This fee is in addition to the amount owed to or being collected by the state by the obligor. If insufficient moneys are available in the debtor's account to cover the fee and the amount in the notice, the institution may deduct the fee amount prior to forwarding moneys to the facility and the amount credited to the obligor's account with the state shall be reduced by the fee amount.

8. *Challenges to action.*

a. Challenges under this section may be initiated only by an obligor or by an account holder of interest. Reviews by the facility under this section are not subject to chapter 17A.

b. The person challenging the action shall submit a written challenge to the person identified as the contact for the facility in the notice, within ten days of the date of the notice.

c. The facility, upon receipt of a written challenge, shall review the facts of the case with the challenging party within ten days of receipt of the challenge. If the challenging party is not available for the review on the scheduled date, the review shall take place without the challenging party being present. Information in favor of the challenging party shall be considered by the facility in the review. The facility may utilize additional information if such information is available. Only a mistake of fact, including, but not limited to, a mistake in the identity of the obligor or a mistake in the amount owed to or being collected by the state shall be considered as a reason to dismiss or modify the action.

d. If the facility determines that a mistake of fact has occurred, the facility shall proceed as follows:

(1) If a mistake in identity has occurred or the obligor does not have a delinquent or accrued amount being collected by or owed to the state, the facility shall notify the financial institution that the administrative levy has been released. The facility shall provide a copy of the notice to the obligor by regular mail.

(2) If the delinquent or accrued amount being collected by or owed to the state is less than the amount indicated in the notice, the facility shall provide a notice to the financial institution of the revised amount, with a copy of the original notice, and issue a notice to the obligor by regular mail. Upon written receipt of the notice from the facility, the financial institution shall release the funds in excess of the revised amount and forward the revised amount to the facility pursuant to the administrative levy.

e. If the facility finds no mistake of fact, the facility shall provide a notice to that effect to the challenging party by regular mail and notify the financial institution to forward the moneys pursuant to the administrative levy.

f. The challenging party shall have the right to file an action for wrongful levy in district court within thirty days of the date of the notice in paragraph "e", either in the county where the obligor or the party known to have an interest in the account resides or in Polk county where the facility is located.

95 Acts, ch 194, §10

See also chapter 252I pertaining to collection of child support payments
*Definition stricken from §524.103 pursuant to 95 Acts, ch 148, §3;
corrective legislation is pending

Section effective January 1, 1996; 95 Acts, ch 194, §12

NEW section

421.31 Powers and duties.

In addition to the powers and duties transferred to the director of revenue and finance, the director has the following powers and duties:

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

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

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

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

c. The Iowa dairy industry commission as established in chapter 179, the Iowa beef cattle producers association as established in chapter 181, the Iowa pork producers council as established in chapter 183A, the Iowa turkey marketing council as established in chapter 184A, the Iowa soybean promotion board as established in chapter 185, the Iowa corn promotion board as established in chapter 185C, and the Iowa egg council as established in chapter 196A.

3. *Audit of claims.* To audit all demands by the state, and to preaudit all accounts submitted for the issuance of warrants.

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

5. *Accounts.* To keep the central budget and proprietary control accounts of the general fund of the state and special funds, as defined in section 8.2, of the state government. Upon elimination of the state deficit under generally accepted accounting principles, including the payment of items budgeted in a subsequent fiscal year which under generally accepted accounting principles should be budgeted in the current fiscal year, the recognition of revenues received and expenditures paid and transfers received and paid within the time period required pursuant to section 8.33 shall be in accordance with generally accepted accounting principles. Budget accounts are those accounts maintained to control the receipt and disposition of all funds, appropriations, and allotments. Proprietary accounts are those accounts relating to assets, liabilities, income, and expense. For each fiscal year, the financial position and results of operations of the state shall be reported in a comprehensive annual financial report prepared in accordance with generally accepted accounting principles, as established by the governmental accounting standards board.

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

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

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

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

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

7. *Entities representing agricultural producers.* To control the financial operations of the Iowa dairy industry commission as provided in chapter 179, the Iowa beef cattle producers association as provided in chapter 181, the Iowa pork producers council as provided in chapter 183A, the Iowa turkey marketing council as provided in chapter 184A, the Iowa soybean promotion board as provided in chapter 185, the Iowa corn promotion board as provided in chapter 185C, and the Iowa egg council as provided in chapter 196A.

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

9. *Interest of the permanent school fund.* To transfer the interest of the permanent school fund to the credit of the first in the nation in education foundation as provided in section 257B.1A.

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

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

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

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

There is annually appropriated from the general fund of the state to the department of revenue and finance an amount sufficient to pay interest costs that may be due the federal government as a result of implementation of the federal law. Nothing in this paragraph authorizes the payment of interest from the general fund of the state for any departmental revolving, trust, or special fund where monthly interest earnings accrue to the credit of the departmental revolving, trust, or special fund. For any departmental revolving, trust, or special fund where monthly interest is accrued to the credit of the fund, the director may authorize a supplemental expenditure to pay interest costs from the individual fund which are due the federal government as a result of implementation of the federal law.

95 Acts, ch 209, §4; 95 Acts, ch 214, §8

NEW subsection 11

Subsection 11, NEW unnumbered paragraph 2

421.60 Tax procedures and practices.

1. *Short title.* This section shall be known and may be cited as the "Tax Procedures and Practices Act".

2. *Procedures and practices.*

a. The department shall prepare a statement which sets forth in simple and nontechnical terms all of the following:

(1) The rights of a taxpayer and the obligations of the department during an audit.

(2) The procedures by which a taxpayer may appeal an adverse decision of the department, including administrative and judicial appeals.

(3) The procedures which the department may use in enforcing the tax laws, including notices of assessment and jeopardy assessment and the filing and enforcement of liens.

The statement prepared in accordance with this paragraph shall be distributed by the department to all taxpayers at the first contact by the department with respect to the determination or collection of any tax, except in the case of simply providing tax forms.

b. The department shall furnish to the taxpayer, before or at the time of issuing a notice of assessment or denial of a refund claim, an explanation of the reasons for the assessment or refund denial. An inadequate explanation shall not invalidate the notice. For purposes of this section, an explanation by the department shall be sufficient where the amount of tax, interest, and penalty is stated together with an attachment setting forth the computation of the tax by the department.

c. If the notice of assessment or denial of a claim for refund relates to a tax return filed pursuant to section 422.14 or chapter 450, 450A, or 451, by the taxpayer which designates an individual as an authorized representative of the taxpayer with respect to that return, or if a power of attorney has been filed with the department by the taxpayer which designates an individual as an authorized representative of the taxpayer with respect to any tax that is included in the notice of assessment or denial of a claim for refund, a copy of the notice together with any additional information required to be sent to the taxpayer shall be sent to the authorized representative as well.

If the department fails to mail a notice of assessment to the last known address of a taxpayer or fails to personally deliver such notice to a taxpayer, interest for the month such mailing or personal delivery fails to occur through the month of the correct mailing or personal delivery is waived.

If the department fails to mail a notice of assessment or denial of a claim for refund to the taxpayer's last known address or fails to personally deliver such notice to a taxpayer and, if applicable, to the taxpayer's authorized representative, the time period to appeal the notice of assessment or a denial of a claim for refund is suspended until the notice or claim denial is correctly mailed or personally delivered, or in any event, for a period not to exceed one year, whichever is the lesser period.

Collection activities, except where a jeopardy situation exists, shall be suspended and the statute of limitations for assessment or collection of the tax shall be tolled during the period in which interest is waived.

d. A taxpayer is permitted to designate in writing the type of tax and tax periods to which any voluntary payment relates, provided that separate written instructions accompany the payment. This paragraph does not apply to jeopardy assessments and does not apply if the department has to enforce collection of the payment.

e. Unless otherwise provided by law, all Iowa taxes which are administered by the department and which result in a refund shall accrue interest at the rate in effect under section 421.7 from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the latest.

f. A taxpayer may appeal a refund claim to the director if a claim for refund has been filed and not denied by the department within six months of the filing of the claim. The filing of an appeal by a taxpayer shall not affect the ability of the department to examine and inspect a taxpayer's records.

g. A taxpayer may request in writing that a contested case proceeding be commenced by the department after a period of six months from the filing of a proper appeal by the taxpayer. The department shall file an answer within thirty days of receipt of the request and a contested case proceeding shall be commenced. In the case of an appeal of an assessment, failure to answer within the thirty-day time period and after a request has been made shall result in the suspension of interest from the time that the department was required to answer until the date that the department files its answer. In the case of an appeal of a denial of a refund, failure to answer within the thirty-day time period, and after a request has been made, shall result in the accrual of interest payable to the taxpayer at double the rate in effect under section 421.7 from the time the department was required to answer until the date that the department files its answer.

h. A taxpayer who has failed to appeal a notice of assessment to the department within the time provided by law may contest the assessment by paying the tax, interest, and penalty, which in the case of divisible taxes might not be the entire liability and by filing a refund claim within the time period provided for filing such claim. The filing of a refund claim allows the time period for which the refund is claimed to be open to examination and to be open to offset, to zero, based upon any issue associated with the type of tax for which the refund is claimed and which has not up to that time been resolved between the taxpayer and the department, irrespective of whether the period of limitations to issue a notice of assessment has expired. The department may make this offset at any time until the department grants or denies the refund.

i. The director may, at any time, abate any unpaid portion of assessed tax, interest, or penalties which

the director determines is erroneous, illegal, or excessive. The director shall prepare quarterly reports summarizing each case in which abatement of tax, interest, or penalties was made. However, the report shall not disclose the identity of the taxpayer.

j. The director shall adopt rules for setting times and places for taxpayer interviews and to permit any taxpayer to record the interviews.

k. If the determination that a return is incorrect is the result of an audit of the books and records of the taxpayer, the tax or additional tax, if any, shall be assessed and the notice of assessment to the taxpayer shall be given by the department within one year after the completion of the examination of the books and records.

l. The department shall annually report to the general assembly all areas of recurrent taxpayer noncompliance with rules or guidelines issued by the department and shall make recommendations concerning the noncompliance in the report.

3. *Installment payments.* The department may permit the payment of a delinquent tax on a deferred basis where the equities indicate that a deferred payment agreement would be in the interest of the state and that without a deferred payment agreement the taxpayer would experience extreme financial hardship. A deferred payment agreement shall include applicable penalty and interest at the rate in effect under section 421.7 on the unpaid balance of the liability.

4. *Costs.*

a. A prevailing taxpayer in an administrative hearing or a court proceeding related to the determination, collection, or refund of a tax, penalty, or interest may be awarded reasonable litigation costs by the department, state board of tax review, or a court, incurred subsequent to the issuance of the notice of assessment or denial of claim for refund in the proceeding, based upon the following:

- (1) The reasonable expenses of expert witnesses.
- (2) The reasonable costs of studies, reports, and tests.
- (3) The reasonable fees of independent attorneys or independent accountants retained by the taxpayer.

(4) An award for reasonable litigation costs shall not exceed twenty-five thousand dollars per case.

b. An award under paragraph "a" shall not be made with respect to a portion of the proceedings during which the prevailing taxpayer has unreasonably protracted the proceedings.

c. For purposes of this section, "*prevailing taxpayer*" means a taxpayer who establishes that the position of the state was not substantially justified and who has substantially prevailed with respect to the amount in controversy or has substantially prevailed with respect to the most significant issue or set of issues presented. The determination of whether a taxpayer is a prevailing taxpayer is to be determined in accordance with chapter 17A.

d. An award for reasonable litigation costs shall be paid to the taxpayer from the general fund of the

state. For purposes of this subsection, there is appropriated from the general fund of the state an amount sufficient to pay each taxpayer entitled to an award under this subsection.

e. This subsection does not apply to the tax imposed by chapter 453B if the department relied upon information provided or action conducted by federal, state, or local officials or law enforcement agencies.

5. *Damages.* Notwithstanding section 669.14, subsection 2, if the director or an employee of the department recklessly or intentionally disregards any tax law or rule in the collection of any tax, or if the director or an employee of the department knowingly or negligently fails to release a lien against or bond on a taxpayer's property, the taxpayer may file a claim in accordance with the Iowa tort claims Act, chapter 669, for damages against the state. However, the damages shall be limited to the actual direct economic damages suffered by the taxpayer as a proximate result of the actions of the director or employee, plus costs, reduced by the amount of such damages and costs as could reasonably have been mitigated by the taxpayer. The Iowa tort claims Act shall be the exclusive remedy for recovering damages resulting from such actions. This subsection does not apply to the tax imposed by chapter 453B.

6. *Burden of proof.* The burden of proof with respect to assessments or denial of refunds in contested case proceedings shall be allocated as follows:

a. With respect to the issue of fraud with intent to evade tax, the burden of proof is upon the department. The burden of proof must be carried by clear and convincing evidence.

b. In a case where the assessment was not made within six years after the return became due, excluding any extension of time for filing, the burden of proof shall be upon the department. However, the burden of proof shall be upon the taxpayer where the determination of the department is the result of the final disposition of a matter between the taxpayer and the internal revenue service or where the taxpayer and the department have signed a waiver of the statute of limitations.

c. In all other cases, the burden of proof shall be upon the taxpayer who challenges the assessment or refund denial, except that, with respect to any new matter or affirmative defense, the burden of proof shall be upon the department. For purposes of this provision, "*new matter*" means an adjustment not set forth in the computation of the tax in the assessment or refund denial as distinguished from a new reason for the assessment or refund denial. "*Affirmative defense*" is one resting on facts not necessary to support the taxpayer's case.

7. *Employee evaluations.* It is unlawful to base a performance evaluation for an employee of the department on the total amount of assessments issued by that employee.

8. *Refund of untimely assessed taxes.* Notwithstanding any other refund statute, if it appears that an amount of tax, penalty, or interest has been paid to the department after the expiration of the statute

of limitations for the department to determine and assess or collect the amount of such tax due, then the amount paid shall be credited against another tax liability of the taxpayer which is outstanding, if the statute of limitations for assessment or collection of that other tax has not expired or the amount paid shall be refunded to the person or, with the person's approval, credited to tax to become due. An application for refund or credit under this subsection must be filed within one year of payment. This subsection shall not be construed to prohibit the department from offsetting the refund claim against any tax due,

if the statute of limitations for that other tax has not expired.

9. *No applicability to real property.* The provisions of this section do not apply to the assessment and taxation of real property.

10. *Illegal tax.* A tax shall not be collected by the department if it is prohibited under the Constitution of the United States or laws of the United States, or under the Constitution of the State of Iowa.

95 Acts, ch 83, §2
NEW subsection 10

CHAPTER 422

INCOME, SALES, SERVICES, AND FRANCHISE TAXES

422.3 Definitions controlling chapter.

For the purpose of this chapter and unless otherwise required by the context:

1. "Court" means the district court in the county of the taxpayer's residence.

2. "Department" means the department of revenue and finance.

3. "Director" means the director of revenue and finance.

4. "Internal Revenue Code" means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended to and including April 15, 1995, whichever is applicable.

5. The word "taxpayer" includes any person, corporation, or fiduciary who is subject to a tax imposed by this chapter.

95 Acts, ch 152, §2
1995 amendment to subsection 4 is retroactive to January 1, 1994, for tax years beginning on or after that date; 95 Acts, ch 152, §7
Subsection 4 amended

422.7 "Net income" — how computed.

The term "net income" means the adjusted gross income before the net operating loss deduction as properly computed for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

1. Subtract interest and dividends from federal securities.

2. Add interest and dividends from foreign securities and from securities of state and other political subdivisions exempt from federal income tax under the Internal Revenue Code.

3. Where the adjusted gross income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules prescribed by the director, to reflect the difference resulting from the use of a basis

of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid.

4. Subtract installment payments received by a beneficiary under an annuity which was purchased under an employee's pension or retirement plan when the commuted value of said installments has been included as a part of the decedent employee's estate for Iowa inheritance tax purposes.

5. Individual taxpayers and married taxpayers who file a joint federal income tax return and who elect to file a joint return, separate returns, or separate filing on a combined return for Iowa income tax purposes, may avail themselves of the disability income exclusion and shall compute the amount of the disability income exclusion subject to the limitations for joint federal income tax return filers provided by section 105(d) of the Internal Revenue Code. The disability income exclusion provided in section 105(d) of the Internal Revenue Code, as amended up to and including December 31, 1982, continues to apply for state income tax purposes for tax years beginning on or after January 1, 1984.

6. Add to the taxable income of trusts, that portion of trust income excluded from federal taxable income under section 641(c) of the Internal Revenue Code.

7. Married taxpayers who file a joint federal income tax return and who elect to file separate returns or separate filing on a combined return for Iowa income tax purposes, may avail themselves of the expensing of business assets and capital loss provisions of sections 179(a) and 1211(b) respectively of the Internal Revenue Code and shall compute the amount of expensing of business assets and capital loss subject to the limitations for joint federal income tax return filers provided by sections 179(b) and 1211(b) respectively of the Internal Revenue Code.

8. Subtract the amount of the jobs tax credit allowable for the tax year under section 51 of the Internal Revenue Code to the extent that the credit increased federal adjusted gross income.

9. Subtract the amount of the alcohol fuel credit allowable for the tax year under section 40 of the Internal Revenue Code to the extent that the credit increased federal adjusted gross income.

10. Notwithstanding the method for computing the amount of travel expenses that may be deducted under section 162(h) of the Internal Revenue Code, for tax years beginning on or after January 1, 1987, a member of the general assembly whose place of residence within the legislative district is greater than fifty miles from the capitol building of the state may deduct the total amount per day determined under section 162(h)(1)(B) of the Internal Revenue Code and a member of the general assembly whose place of residence within the legislative district is fifty or fewer miles from the capitol building of the state may deduct fifty dollars per day. This subsection does not apply to a member of the general assembly who elects to itemize for state tax purposes the member's travel expenses.

11. Add the amounts deducted and subtract the amounts included as income as a result of the treatment provided sale-leaseback agreements under section 168(f)(8) of the Internal Revenue Code for property placed in service by the transferee prior to January 1, 1986, to the extent that the amounts deducted and the amounts included in income are not otherwise deductible or included in income under the Internal Revenue Code as amended to and including December 31, 1985. Entitlement to depreciation on any property included in a sale-leaseback agreement which is placed in service by the transferee prior to January 1, 1986, shall be determined under the Internal Revenue Code as amended to and including December 31, 1985, excluding section 168(f)(8) in making the determination.

12. If the adjusted gross income includes income or loss from a small business operated by the taxpayer, an additional deduction shall be allowed in computing the income or loss from the small business if the small business hired for employment in the state during its annual accounting period ending with or during the taxpayer's tax year any of the following:

a. A handicapped individual domiciled in this state at the time of the hiring who meets any of the following conditions:

- (1) Has a physical or mental impairment which substantially limits one or more major life activities.
- (2) Has a record of that impairment.
- (3) Is regarded as having that impairment.

b. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

- (1) Has been convicted of a felony in this or any other state or the District of Columbia.
- (2) Is on parole pursuant to chapter 906.
- (3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to chapter 904, division IX.

c. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1 applies.

The amount of the additional deduction is equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraphs "a", "b", and "c" who were hired for the first time by that business during the annual accounting period for work done in the state. This additional deduction is allowed for the wages paid to those individuals successfully completing a probationary period during the twelve months following the date of first employment by the business and shall be deducted at the close of the annual accounting period.

The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the division of job service of the department of employment services, the additional deduction shall be allowed.

A taxpayer who is a partner of a partnership or a shareholder of a subchapter S corporation, may deduct that portion of wages qualified under this subsection paid by the partnership or subchapter S corporation based on the taxpayer's pro rata share of the profits or losses from the partnership or subchapter S corporation.

For purposes of this subsection, "*physical or mental impairment*" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems or any mental or psychological disorder, including mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

For purposes of this subsection, "*small business*" means small business as defined in section 16.1, subsection 36, except that it shall also include the operation of a farm.

12A. If the adjusted gross income includes income or loss from a business operated by the taxpayer, and if the business does not qualify for the adjustment under subsection 12, an additional deduction shall be allowed in computing the income or loss from the business if the business hired for employment in the state during its annual accounting period ending with or during the taxpayer's tax year either of the following:

a. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

- (1) Has been convicted of a felony in this or any other state or the District of Columbia.
- (2) Is on parole pursuant to chapter 906.

(3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to chapter 904, division IX.

b. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1 applies.

The amount of the additional deduction is equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraphs "a" and "b" who were hired for the first time by that business during the annual accounting period for work done in the state. This additional deduction is allowed for the wages paid to those individuals successfully completing a probationary period during the twelve months following the date of first employment by the business and shall be deducted at the close of the annual accounting period.

The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the division of job service of the department of employment services, the additional deduction shall be allowed.

A taxpayer who is a partner of a partnership or a shareholder of a subchapter S corporation, may deduct that portion of wages qualified under this subsection paid by the partnership or subchapter S corporation based on the taxpayer's pro rata share of the profits or losses from the partnership or subchapter S corporation.

The department shall develop and distribute information concerning the deduction available for businesses employing persons named in paragraphs "a" and "b".

13. Subtract, to the extent included, the amount of additional social security benefits taxable under the Internal Revenue Code for tax years beginning on or after January 1, 1994. The amount of social security benefits taxable as provided in section 86 of the Internal Revenue Code, as amended up to and including January 1, 1993, continues to apply for state income tax purposes for tax years beginning on or after January 1, 1994. Married taxpayers, who file a joint federal income tax return and who elect to file separate returns or who elect separate filing on a combined return for state income tax purposes, shall allocate between the spouses the amount of benefits subtracted from net income in the ratio of the social security benefits received by each spouse to the total of these benefits received by both spouses.

14. Add the amount of intangible drilling and development costs optionally deducted in the year paid or incurred as described in section 57(a)(2) of the Internal Revenue Code. This amount may be recov-

ered through cost depletion or depreciation, as appropriate under rules prescribed by the director.

15. Add the percentage depletion amount determined with respect to an oil, gas, or geothermal well as described in section 57(a)(1) of the Internal Revenue Code.

16. Subtract the income resulting from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure if all of the following conditions are met:

a. The forfeiture, transfer, or sale or exchange was done for the purpose of establishing a positive cash flow.

b. Immediately before the forfeiture, transfer, or sale or exchange, the taxpayer's debt to asset ratio exceeded ninety percent as computed under generally accepted accounting practices.

c. The taxpayer's net worth at the end of the tax year is less than seventy-five thousand dollars. In determining a taxpayer's net worth at the end of the tax year a taxpayer shall include any asset transferred within one hundred twenty days prior to the end of the tax year without adequate and full consideration in money or money's worth. In determining the taxpayer's debt to asset ratio, the taxpayer shall include any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange without adequate and full consideration in money or money's worth. For purposes of this subsection, actual notice of foreclosure includes, but is not limited to, bankruptcy or written notice from a creditor of the creditor's intent to foreclose where there is a reasonable belief that the creditor can force a sale of the asset. For purposes of this subsection, in the case of married taxpayers, except in the case of a husband and wife who live apart at all times during the tax year, the assets and liabilities of both spouses shall be considered for purposes of determining the taxpayer's net worth or the taxpayer's debt to asset ratio.

17. Add interest and dividends from regulated investment companies exempt from federal income tax under the Internal Revenue Code and subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under section 852(b)(4)(B) of the Internal Revenue Code.

18. Reserved.

19. Subtract interest earned on bonds and notes issued by the agricultural development authority as provided in section 175.17, subsection 10.

20. Subtract, to the extent included, the proceeds received pursuant to a judgment in or settlement of a lawsuit against the manufacturer or distributor of a Vietnam herbicide for damages resulting from exposure to the herbicide. This subsection applies to proceeds received by a taxpayer who is a disabled veteran or who is a beneficiary of a disabled veteran.

For purposes of this subsection:

a. "Vietnam herbicide" means a herbicide, defoliant or other causative agent containing dioxin, including, but not limited to, Agent Orange, used in the Vietnam Conflict beginning December 22, 1961, and ending May 7, 1975, inclusive.

b. "Agent Orange" means the herbicide composed of trichlorophenoxyacetic acid and dichlorophenoxyacetic acid and the contaminant dioxin (TCDD).

21. Subtract forty-five percent of the net capital gain from the following:

a. Net capital gain from the sale of real property used in a business, in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years, or from the sale of a business, as defined in section 422.42, in which the taxpayer was employed or in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years. The sale of a business means the sale of all or substantially all of the tangible personal property or service of the business.

b. Net capital gain from the sale of cattle or horses held by the taxpayer for breeding, draft, dairy, or sporting purposes for a period of twenty-four months or more from the date of acquisition; but only if the taxpayer received more than one-half of the taxpayer's gross income from farming or ranching operations during the tax year.

c. Net capital gain from the sale of breeding livestock, other than cattle or horses, if the livestock is held by the taxpayer for a period of twelve months or more from the date of acquisition; but only if the taxpayer received more than one-half of the taxpayer's gross income from farming or ranching operations during the tax year.

d. Net capital gain from the sale of timber as defined in section 631(a) of the Internal Revenue Code.

The net capital gain of paragraphs "a", "b", "c", and "d" together shall not exceed seventeen thousand five hundred dollars for the tax year. Married taxpayers who elect separate filing on a combined return for state tax purposes are treated as one taxpayer and the amount of net capital gain to be used to determine the total amount to be subtracted by them shall not exceed seventeen thousand five hundred dollars in the aggregate. Married taxpayers who file jointly or separately on a combined return shall prorate the seventeen thousand five hundred dollar limitation between them based on the ratio of each spouse's net capital gain to the total net capital gain of both spouses. In the case of married taxpayers filing separate returns, the amount of net capital gain to be used to determine the amount to be subtracted by each spouse shall not exceed eight thousand seven hundred fifty dollars. However, to the extent otherwise allowed, the deduction provided in this subsection is not allowed for purposes of computation of a net operating loss in section 422.9, subsection 3, and in computing the income for the taxable year or years for which a net operating loss is deducted.

22. Subtract, to the extent included, the amounts paid to an eligible individual under section 105 of the Civil Liberties Act of 1988, Pub. L. No. 100-383, Title I, as satisfaction for a claim against the United States arising out of the confinement, holding in custody, relocation, or other deprivation of liberty or property of an individual of Japanese ancestry.

23. Reserved.

24. Subtract to the extent included, active duty pay received by a person in the national guard or armed forces military reserve for services performed on or after August 2, 1990, pursuant to military orders related to the Persian Gulf Conflict.

25. Reserved.

26. Add depreciation taken for federal income tax purposes on a speculative shell building defined in section 427.1, subsection 41, which is owned by a for-profit entity and the for-profit entity is receiving the proper tax exemption. Subtract depreciation computed as if the speculative shell building were classified as fifteen-year property under the accelerated cost recovery system of the Internal Revenue Code during the period during which it is owned by the for-profit entity and is receiving the property tax exemption. However, this subsection does not apply to a speculative shell building which is used by the for-profit entity, subsidiary of the for-profit entity, or majority owners of the for-profit entity, for other than as a speculative shell building, as defined in section 427.1, subsection 41.

27. Subtract, to the extent included, payments received by an individual providing unskilled in-home health-related care services pursuant to section 249.3, subsection 2, paragraph "a", subparagraph (2), to a member of the individual caregiver's family. For purposes of this subsection, a member of the individual caregiver's family includes a spouse, parent, stepparent, child, stepchild, brother, stepbrother, sister, stepsister, lineal ancestor, or lineal descendant, and such persons by marriage or adoption. A health care professional licensed by an examination board designated in section 147.13, subsections 1 through 10, is not eligible for the exemption authorized in this subsection.

28. If the taxpayer is owner of an individual development account certified under chapter 541A at any time during the tax year the following adjustments shall be made:

a. Subtract, to the extent included, all of the following:

(1) Contributions made to the account by persons and entities, other than the taxpayer, as authorized in chapter 541A.

(2) The amount of any savings refund authorized under section 541A.3, subsection 1.

(3) Earnings from the account to the extent not withdrawn.

b. Add, to the extent not included, all of the following:

(1) Earnings from the account which are withdrawn.

(2) Amounts withdrawn which are not authorized by section 541A.2, subsection 4, paragraphs "a"

and "b" and which are attributable to contributions by persons and entities, other than the taxpayer, as provided in section 541A.2, subsection 4.

(3) If the account is closed, amounts received by the taxpayer which have not previously been taxed under this division, except amounts that are re-deposited in another individual development account, or the state human investment reserve pool as provided in section 541A.2, subsection 5, and including the total amount of any savings refund authorized under section 541A.3.

29. Add, to the extent not included, the amount of the taxpayer's employee contributions picked up by the taxpayer's employer under chapter 97A or 411. The director shall by rule provide a formula to exclude income, to the extent included, from adjusted gross income amounts added under this subsection which are subsequently returned to the taxpayer as retirement benefits or otherwise.

30. Add, to the extent not included, the amount of the taxpayer's employee contributions picked up by the taxpayer's employer under chapter 97B. The director shall by rule provide a formula to exclude income, to the extent included, from adjusted gross income amounts added under this subsection which are subsequently returned to the taxpayer as retirement benefits or otherwise.

31. Add, to the extent not included, the amount of the taxpayer's teacher assessment picked up by the taxpayer's employing school district under chapter 294. The director shall by rule provide a formula to exclude income, to the extent included, from adjusted gross income amounts added under this subsection which are subsequently returned to the taxpayer as retirement benefits or otherwise.

32. Subtract, to the extent not otherwise deducted in computing adjusted gross income, the amounts paid by the taxpayer for the purchase of health benefits coverage or insurance for the taxpayer or taxpayer's spouse or dependent.

33. Subtract the amount of the employer social security credit allowable for the tax year under section 45B of the Internal Revenue Code to the extent that the credit increases federal adjusted gross income.

34. For a person who is disabled, or is fifty-five years of age or older, or is the surviving spouse of an individual or a survivor having an insurable interest in an individual who would have qualified for the exemption under this subsection for the tax year, subtract, to the extent included, the total amount of a governmental or other pension or retirement pay, including, but not limited to, defined benefit or defined contribution plans, annuities, individual retirement accounts, plans maintained or contributed to by an employer, or maintained or contributed to by a self-employed person as an employer, and deferred compensation plans or any earnings attributable to the deferred compensation plans, up to a maximum of three thousand dollars for a person who files a separate state income tax return and up to a maximum of six thousand dollars for a husband and wife

who file a joint state income tax return. However, a surviving spouse who is not disabled or fifty-five years of age or older can only exclude the amount of pension or retirement pay received as a result of the death of the other spouse.

95 Acts, ch 5, §1; 95 Acts, ch 152, §3; 95 Acts, ch 206, §1

Subsection 32 is effective January 1, 1996, for tax years beginning on or after that date; 95 Acts, ch 5, §14

Subsection 33 is retroactive to January 1, 1994, for tax years beginning on or after that date; 95 Acts, ch 152, §7

Subsection 34 is retroactive to January 1, 1995, for tax years beginning on or after that date; 95 Acts, ch 206, §4

NEW subsections 32-34

422.9 Deductions from net income.

In computing taxable income of individuals, there shall be deducted from net income the larger of the following amounts:

1. An optional standard deduction, after deduction of federal income tax, equal to one thousand two hundred thirty dollars for a married person who files separately or a single person or equal to three thousand thirty dollars for a husband and wife who file a joint return, a surviving spouse, or an unmarried head of household. The optional standard deduction shall not exceed the amount remaining after deduction of the federal income tax.

2. The total of contributions, interest, taxes, medical expense, nonbusiness losses, and miscellaneous expenses deductible for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

a. Subtract the deduction for Iowa income taxes.

b. Add the amount of federal income taxes paid or accrued as the case may be, during the tax year, adjusted by any federal income tax refunds. Provided, however, that where married persons, who have filed a joint federal income tax return, file separately, such total shall be divided between them according to the portion thereof paid or accrued, as the case may be, by each.

c. Add the amount by which expenses paid or incurred in connection with the adoption of a child by the taxpayer exceed three percent of the net income of the taxpayer, or of the taxpayer and spouse in the case of a joint return. The expenses may include medical and hospital expenses of the biological mother which are incident to the child's birth and are paid by the taxpayer, welfare agency fees, legal fees, and all other fees and costs relating to the adoption of a child if the child is placed by a child-placing agency licensed under chapter 238 or by a person making an independent placement according to the provisions of chapter 600.

d. Add an additional deduction for mileage incurred by the taxpayer in voluntary work for a charitable organization consisting of the excess of the state employee mileage reimbursement over the amount deductible for federal income tax purposes. The deduction shall be proven by the keeping of a contemporaneous diary by the person throughout the period of the voluntary work in the tax year.

e. Add the amount, not to exceed five thousand dollars, of expenses not otherwise deductible under

this section actually incurred in the home of the taxpayer for the care of a person who is the grandchild, child, parent, or grandparent of the taxpayer or the taxpayer's spouse and who is unable, by reason of physical or mental disability, to live independently and is receiving, or would be eligible to receive if living in a health care facility licensed under chapter 135C, medical assistance benefits under chapter 249A. In the event that the person being cared for is receiving assistance benefits under chapter 239, the expenses not otherwise deductible shall be the net difference between the expenses actually incurred in caring for the person and the assistance benefits received under chapter 239.

f. Add the amount the taxpayer has paid to others, not to exceed one thousand dollars for each dependent in grades kindergarten through twelve, for tuition and textbooks of each dependent in attending an elementary or secondary school situated in Iowa, which school is accredited or approved under section 256.11, which is not operated for profit, and which adheres to the provisions of the federal Civil Rights Act of 1964 and chapter 216. As used in this lettered paragraph, "textbooks" means books and other instructional materials and equipment used in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state and does not include instructional books and materials used in the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship, and does not include books or materials for extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature. The deduction in this paragraph does not apply to a taxpayer whose net income, as properly computed for state tax purposes, is forty-five thousand dollars or more. In the case where the taxpayer is married, whether filing jointly or separately, the deduction does not apply if the combined net income of the taxpayer and spouse is forty-five thousand dollars or more.

As used in this lettered paragraph, "tuition" means any charges for the expenses of personnel, buildings, equipment and materials other than textbooks, and other expenses of elementary or secondary schools which relate to the teaching only of those subjects legally and commonly taught in public elementary and secondary schools in this state and which do not relate to the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship, and which do not relate to extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature.

g. Reserved.

h. To the extent not otherwise included pursuant to section 164 of the Internal Revenue Code, add the amount of the annual registration fee paid for a multipurpose vehicle pursuant to section 321.124, subsection 3, paragraph "h", which is based upon the

value of the vehicle. For purposes of this paragraph, sixty percent of the amount of the registration fee is based upon the value of the multipurpose vehicle.

i. If the taxpayer has a deduction for medical care expenses under section 213 of the Internal Revenue Code, the taxpayer shall recompute for the purposes of this subsection the amount of the deduction under section 213 by excluding from medical care, as defined in section 213, the amount subtracted under section 422.7, subsection 32.

3. If, after applying all of the adjustments provided for in section 422.7, the allocation provisions of section 422.8, and the deductions allowable in this section subject to the modifications provided in section 172(d) of the Internal Revenue Code, the taxable income results in a net operating loss, the net operating loss shall be deducted as follows:

a. The Iowa net operating loss shall be carried back three taxable years or to the taxable year in which the individual first earned income in Iowa whichever year is the later.

b. The Iowa net operating loss remaining after being carried back as required in paragraph "a" of this subsection or if not required to be carried back shall be carried forward fifteen taxable years.

c. If the election under section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward fifteen taxable years.

4. Where married persons file separately, both must use the optional standard deduction if either elects to use it.

5. A taxpayer affected by section 422.8 shall, if the optional standard deduction is not used, be permitted to deduct only such portion of the total referred to in subsection 2 above as is fairly and equitably allocable to Iowa under the rules prescribed by the director.

95 Acts, ch 5, §2

Subsection 2, paragraph i, is effective January 1, 1996, for tax years beginning on or after that date; 95 Acts, ch 5, §14

Subsection 2, NEW paragraph i

422.10 Research activities credit.

The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state. For individuals, the credit equals six and one-half percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. For purposes of this section, an individual may claim a research credit for qualifying research expenditures incurred by a partnership, subchapter S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, subchapter S corporation, estate, or trust. For purposes of this section, "qualifying expenditures for increasing research ac-

activities” means the qualifying expenditures as defined for the federal credit for increasing research activities which would be allowable under section 41 of the Internal Revenue Code in effect on January 1, 1995.

Any credit in excess of the tax liability imposed by section 422.5 less the credits allowed under sections 422.11A, 422.11C, 422.12, and 422.12B for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer’s final, completed return credited to the tax liability for the following taxable year.

95 Acts, ch 152, §4
 1995 amendment to unnumbered paragraph 1 is retroactive to January 1, 1994, for tax years beginning on or after that date; 95 Acts, ch 152, §7
 Unnumbered paragraph 1 amended

422.12 Deductions from computed tax.

There shall be deducted from but not to exceed the tax, after the same shall have been computed as provided in this division, the following:

1. A personal exemption credit in the following amounts:

a. For an estate or trust, a single individual, or a married person filing a separate return, twenty dollars.

b. For a head of household, or a husband and wife filing a joint return, forty dollars.

c. For each dependent, an additional forty dollars. As used in this section, the term “dependent” has the same meaning as provided by the Internal Revenue Code.

d. For a single individual, husband, wife or head of household, an additional exemption of twenty dollars for each of said individuals who has attained the age of sixty-five years before the close of the tax year or on the first day following the end of the tax year.

e. For a single individual, husband, wife or head of household, an additional exemption of twenty dollars for each of said individuals who is blind at the close of the tax year. For the purposes of this paragraph, an individual is blind only if the individual’s central visual acuity does not exceed twenty-two hundredths in the better eye with correcting lenses, or if the individual’s visual acuity is greater than twenty-two hundredths but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

2. For those who do not itemize their deductions, a tuition credit equal to five percent of the first one thousand dollars which the taxpayer has paid to others for each dependent in grades kindergarten through twelve, for tuition and textbooks of each dependent in attending an elementary or secondary school situated in Iowa, which school is accredited or approved under section 256.11, which is not operated for profit, and which adheres to the provisions of the federal Civil Rights Act of 1964 and chapter 216. As used in this subsection, “textbooks” means books and other instructional materials and equipment used in elementary and secondary schools in teaching only

those subjects legally and commonly taught in public elementary and secondary schools in this state and does not include instructional books and materials used in the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship, and does not include books or materials for extracurricular activities including sporting events, musical or dramatic events, speech activities, driver’s education, or programs of a similar nature. Notwithstanding any other provision, all other credits allowed under sections 422.12 and 422.12B shall be deducted before the tuition credit under this subsection. The credit in this subsection does not apply to a taxpayer whose net income, as properly computed for state tax purposes, is forty-five thousand dollars or more. In the case where the taxpayer is married, whether filing jointly or separately, the credit does not apply if the combined net income of the taxpayer and spouse is forty-five thousand dollars or more.

As used in this subsection, “tuition” means any charges for the expenses of personnel, buildings, equipment and materials other than textbooks, and other expenses of elementary or secondary schools which relate to the teaching only of those subjects legally and commonly taught in public elementary and secondary schools in this state and which do not relate to the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship, and which do not relate to extracurricular activities including sporting events, musical or dramatic events, speech activities, driver’s education, or programs of a similar nature.

3. For the purpose of this section, the determination of whether an individual is married shall be made as of the close of the individual’s tax year unless the individual’s spouse dies during the individual’s tax year, in which case the determination shall be made as of the date of the spouse’s death. An individual legally separated from the individual’s spouse under a decree of divorce or of separate maintenance shall not be considered married.

95 Acts, ch 206, §2
 1995 amendment to subsection 1, paragraph c, is retroactive to January 1, 1995, for tax years beginning on or after that date; 95 Acts, ch 206, §4
 Subsection 1, paragraph c amended

422.16A Job training withholding — certification and transfer.

Upon payment in full of a certificate of participation or other obligation issued to fund a job training program under chapter 260E, the community college providing the job training program shall notify the department of economic development of the amount paid by the employer or business to the community college to retire the certificate during the previous twelve months. The department of economic development shall notify the department of revenue and finance of that amount. The department shall credit to the workforce development fund established in section 15.343 twenty-five percent of that amount each quarter for a period of ten years. If the amount of withholding from the business or employer is in-

sufficient, the department shall prorate the quarterly amount credited to the workforce development fund. The maximum amount from all employers which shall be transferred to the workforce development fund in any year is two million dollars.

95 Acts, ch 184, §9

Section is repealed effective June 30, 1997; 95 Acts, ch 184, §12

NEW section

422.25 Computation of tax, interest, and penalties — limitation.

1. *a.* Within three years after the return is filed or within three years after the return became due, including any extensions of time for filing, whichever time is the later, the department shall examine the return and determine the tax. However, if the taxpayer omits from income an amount which will, under the Internal Revenue Code, extend the statute of limitations for assessment of federal tax to six years under the federal law, the period for examination and determination is six years. In addition to the applicable period of limitation for examination and determination, the department may make an examination and determination at any time within six months from the date of receipt by the department of written notice from the taxpayer of the final disposition of any matter between the taxpayer and the internal revenue service with respect to the particular tax year. In order to begin the running of the six-month period, the notice shall be in writing in any form sufficient to inform the department of the final disposition with respect to that year, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice.

b. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return. In lieu of the period of limitation for any prior year for which an overpayment of tax or an elimination or reduction of an underpayment of tax due for that prior year results from the carryback to that prior year of a net operating loss or net capital loss, the period is the period of limitation for the taxable year of the net operating loss or net capital loss which results in the carryback. If the tax found due is greater than the amount paid, the department shall compute the amount due, together with interest and penalties as provided in subsection 2, and shall mail a notice of assessment to the taxpayer and, if applicable, to the taxpayer's authorized representative of the total, which shall be computed as a sum certain if paid on or before the last day of the month in which the notice is postmarked, or on or before the last day of the following month if the notice is postmarked after the twentieth day of any month. The notice shall also inform the taxpayer of the additional interest and penalty which will be added to the total due if not paid on or before the last day of the applicable month.

2. In addition to the tax or additional tax determined by the department under subsection 1, the taxpayer shall pay interest on the tax or additional

tax at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. In addition to the tax or additional tax, the taxpayer shall pay a penalty as provided in section 421.27.

3. If the amount of the tax as determined by the department is less than the amount paid, the excess shall be refunded with interest, the interest to begin to accrue on the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the latest, at the rate in effect under section 421.7 counting each fraction of a month as an entire month under the rules prescribed by the director. If an overpayment of tax results from a net operating loss or net capital loss which is carried back to a prior year, the overpayment, for purposes of computing interest on refunds, shall be considered as having been made on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or on the first day of the second calendar month following the date of the actual payment of the tax, whichever is later. However, when the net operating loss or net capital loss carryback to a prior year eliminates or reduces an underpayment of tax due for an earlier year, the full amount of the underpayment of tax shall bear interest at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month from the due date of the tax for the earlier year to the last day of the taxable year in which the net operating loss or net capital loss occurred.

4. All payments received must be credited first, to the penalty and interest accrued, and then to the tax due. For purposes of this subsection, the department shall not reapply prior payments made by the taxpayer to penalty or interest determined to be due after the date of those prior payments, except that the taxpayer and the department may agree to apply payments in accordance with rules adopted by the director when there are both agreed and unagreed to items as a result of an examination.

5. A person or withholding agent required to supply information, to pay tax, or to make, sign, or file a semimonthly, monthly, or quarterly deposit form or return or supplemental return, who willfully makes a false or fraudulent semimonthly, monthly, or quarterly deposit form or return, or willfully fails to pay the tax, supply the information, or make, sign, or file the semimonthly, monthly, or quarterly deposit form or return, at the time or times required by law, is guilty of a fraudulent practice.

6. The certificate of the director to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required under the provisions of this division shall be prima facie evidence thereof except as otherwise provided in this section.

7. The periods of limitation provided by this section may be extended by the taxpayer by signing a waiver agreement to be provided by the department.

The agreement shall stipulate the period of extension and the year or years to which the extension applies. It shall provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

8. A person or withholding agent who willfully attempts in any manner to defeat or evade a tax imposed by this division or the payment of the tax, upon conviction for each offense is guilty of a class "D" felony.

9. The jurisdiction of any offense as defined in this section is in the county of the residence of the person so charged, unless such person be a nonresident of this state or the person's residence in this state is not established, in either of which events jurisdiction of such offense is in the county of the seat of government of the state of Iowa.

10. A prosecution for any offense defined in this section must be commenced within six years after the commission thereof, and not after.

11. If a taxpayer files an amended return within sixty days prior to the expiration of the applicable period of limitations described in subsection 1, the department has sixty days from the date of receipt of the amended return to issue an assessment for any applicable tax, interest, or penalty.

95 Acts, ch 83, §3

Subsection 11 is retroactive to April 1, 1995, for amended tax returns filed on or after that date; 95 Acts, ch 83, §34
NEW subsection 11

422.32 Definitions.

For the purpose of this division and unless otherwise required by the context:

1. The term "*affiliated group*" means a group of corporations as defined in section 1504(a) of the Internal Revenue Code.

2. "*Business income*" means income arising from transactions and activity in the regular course of the taxpayer's trade or business; or income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations; or gain or loss resulting from the sale, exchange, or other disposition of real property or of tangible or intangible personal property, if the property while owned by the taxpayer was operationally related to the taxpayer's trade or business carried on in Iowa; or gain or loss resulting from the sale, exchange, or other disposition of stock in another corporation if the activities of the other corporation were operationally related to the taxpayer's trade or business carried on in Iowa while the stock was owned by the taxpayer. A taxpayer may have more than one regular trade or business in determining whether income is business income.

It is the intent of the general assembly to treat as apportionable business income all income that may be treated as apportionable business income under the Constitution of the United States.

The filing of an Iowa income tax return on a combined report basis is neither allowed nor required by this subsection.

3. "*Commercial domicile*" means the principal place from which the trade of business of the taxpayer is directed or managed.

4. "*Corporation*" includes joint stock companies, and associations organized for pecuniary profit, and publicly traded partnerships and limited liability companies taxed as corporations under the Internal Revenue Code.

5. The words "*domestic corporation*" mean any corporation organized under the laws of this state.

6. The words "*foreign corporation*" mean any corporation other than a domestic corporation.

7. "*Nonbusiness income*" means all income other than business income.

8. "*State*" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

9. "*Taxable in another state*". For purposes of allocation and apportionment of income under this division, a taxpayer is taxable in another state if:

a. In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

b. That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

10. The term "*unitary business*" means a business carried on partly within and partly without a state where the portion of the business carried on within the state depends on or contributes to the business outside the state.

The words, terms, and phrases defined in division II, section 422.4, subsections 4 to 6, 8, 9, 13, and 15 to 17, when used in this division, shall have the meanings ascribed to them in said section except where the context clearly indicates a different meaning.

95 Acts, ch 141, §1

1995 amendment to subsection 2 applies retroactively to January 1, 1995, for tax years beginning on or after that date; effect on filed tax returns; 95 Acts, ch 141, §2, 3

Subsection 2 amended

422.33 Corporate tax imposed — credit.

1. A tax is imposed annually upon each corporation organized under the laws of this state, and upon each foreign corporation doing business in this state, or deriving income from sources within this state, in an amount computed by applying the following rates of taxation to the net income received by the corporation during the income year:

a. On the first twenty-five thousand dollars of taxable income, or any part thereof, the rate of six percent.

b. On taxable income between twenty-five thousand dollars and one hundred thousand dollars or any part thereof, the rate of eight percent.

c. On taxable income between one hundred thousand dollars and two hundred fifty thousand dollars or any part thereof, the rate of ten percent.

d. On taxable income of two hundred fifty thousand dollars or more, the rate of twelve percent.

"Income from sources within this state" means income from real, tangible, or intangible property located or having a situs in this state.

1A. There is imposed upon each corporation exempt from the general business tax on corporations by section 422.34, subsection 2, a tax at the rates in subsection 1 upon the state's apportioned share computed in accordance with subsections 2 and 3 of the unrelated business income computed in accordance with the Internal Revenue Code and with the adjustments set forth in section 422.35.

2. If the trade or business of the corporation is carried on entirely within the state, the tax shall be imposed on the entire net income, but if the trade or business is carried on partly within and partly without the state or if income is derived from sources partly within and partly without the state, the tax shall be imposed only on the portion of the net income reasonably attributable to the trade or business or sources within the state, with the net income attributable to the state to be determined as follows:

a. Nonbusiness interest, dividends, rents and royalties, less related expenses, shall be allocated within and without the state in the following manner:

(1) Nonbusiness interest, dividends, and royalties from patents and copyrights shall be allocable to this state if the taxpayer's commercial domicile is in this state.

(2) Nonbusiness rents and royalties received from real property located in this state are allocable to this state.

(3) Nonbusiness rents and royalties received from tangible personal property are allocable to this state to the extent that the property is utilized in this state; or in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown, or unascertainable by the taxpayer tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payor obtained possession.

(4) Nonbusiness capital gains and losses from the sale or other disposition of assets shall be allocated as follows:

Gains and losses from the sale or other disposition of real property located in this state are allocable to this state.

Gains and losses from the sale or other disposition of tangible personal property are allocable to this state if the property had a situs in this state at the

time of the sale or disposition or if the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

Gains and losses from the sale or disposition of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

b. Net nonbusiness income of the above class having been separately allocated and deducted as above provided, the remaining net business income of the taxpayer shall be allocated and apportioned as follows:

(1) Business interest, dividends, rents, and royalties shall be reasonably apportioned within and without the state under rules adopted by the director.

(2) Capital gains and losses from the sale or other disposition of assets shall be apportioned to the state based upon the business activity ratio applicable to the year the gain or loss is determined if the corporation determines Iowa taxable income by a sales, gross receipts or other business activity ratio. If the corporation has only allocable income, capital gains and losses from the sale or other disposition of assets shall be allocated in accordance with paragraph "a", subparagraph (4).

(3) Where income is derived from business other than the manufacture or sale of tangible personal property, the income shall be specifically allocated or equitably apportioned within and without the state under rules of the director.

(4) Where income is derived from the manufacture or sale of tangible personal property, the part attributable to business within the state shall be in that proportion which the gross sales made within the state bear to the total gross sales.

(5) Where income consists of more than one class of income as provided in subparagraphs (1) to (4) of this paragraph, it shall be reasonably apportioned by the business activity ratio provided in rules adopted by the director.

(6) The gross sales of the corporation within the state shall be taken to be the gross sales from goods delivered or shipped to a purchaser within the state regardless of the f.o.b. point or other conditions of the sale, excluding deliveries for transportation out of the state.

For the purpose of this section, the word "sale" shall include exchange, and the word "manufacture" shall include the extraction and recovery of natural resources and all processes of fabricating and curing. The words "tangible personal property" shall be taken to mean corporeal personal property, such as machinery, tools, implements, goods, wares, and merchandise, and shall not be taken to mean money deposits in banks, shares of stock, bonds, notes, credits, or evidence of an interest in property and evidences of debt.

3. If any taxpayer believes that the method of allocation and apportionment hereinbefore prescribed, as administered by the director and applied to the taxpayer's business, has operated or will so

operate as to subject the taxpayer to taxation on a greater portion of the taxpayer's net income than is reasonably attributable to business or sources within the state, the taxpayer shall be entitled to file with the director a statement of the taxpayer's objections and of such alternative method of allocation and apportionment as the taxpayer believes to be proper under the circumstances with such detail and proof and within such time as the director may reasonably prescribe; and if the director shall conclude that the method of allocation and apportionment theretofore employed is in fact inapplicable and inequitable, the director shall redetermine the taxable income by such other method of allocation and apportionment as seems best calculated to assign to the state for taxation the portion of the income reasonably attributable to business and sources within the state, not exceeding, however, the amount which would be arrived at by application of the statutory rules for apportionment.

4. In addition to all taxes imposed under this division, there is imposed upon each corporation doing business within the state the greater of the tax determined in subsection 1, paragraphs "a" through "d" or the state alternative minimum tax equal to sixty percent of the maximum state corporate income tax rate, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer computed under this subsection.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income as computed with the adjustments in section 422.35 and with the following adjustments:

a. Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1) and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4) and (d), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code. In making the adjustment under section 56(c)(1) of the Internal Revenue Code, interest and dividends from federal securities and interest and dividends from state and other political subdivisions and from regulated investment companies exempt from federal income tax under the Internal Revenue Code, net of amortization of any discount or premium, shall be subtracted.

b. Apply the allocation and apportionment provisions of subsection 2.

c. Subtract an exemption amount of forty thousand dollars. This exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this paragraph, exceeds one hundred fifty thousand dollars.

d. In the case of a net operating loss computed for a tax year beginning after December 31, 1986 which is carried back or carried forward to the current

taxable year, the net operating loss shall be reduced by the amount of items of tax preference and adjustments arising in the tax year which is taken into account in computing the net operating loss in section 422.35, subsection 11. The deduction for a net operating loss for a tax year beginning after December 31, 1986 which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

5. The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state equal to six and one-half percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to the total qualified research expenditures. For purposes of this subsection, "qualifying expenditures for increasing research activities" means the qualifying expenditures as defined for the federal credit for increasing research activities which would be allowable under section 41 of the Internal Revenue Code in effect on January 1, 1995.

Any credit in excess of the tax liability for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on its final, completed return credited to the tax liability for the following taxable year.

6. The taxes imposed under this division shall be reduced by a new jobs tax credit. An industry which has entered into an agreement under chapter 260E and which has increased its base employment level by at least ten percent within the time set in the agreement or, in the case of an industry without a base employment level, adds new jobs within the time set in the agreement is entitled to this new jobs tax credit for the tax year selected by the industry. In determining if the industry has increased its base employment level by ten percent or added new jobs, only those new jobs directly resulting from the project covered by the agreement and those directly related to those new jobs shall be counted. The amount of this credit is equal to the product of six percent of the taxable wages upon which an employer is required to contribute to the state unemployment compensation fund, as defined in section 96.19, subsection 37, times the number of new jobs existing in the tax year that directly result from the project covered by the agreement or new jobs that directly result from those new jobs. The tax year chosen by the industry shall either begin or end during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten tax years or until depleted in less than the ten years. For purposes of this section, "agreement", "industry", "new job" and "project" mean the

same as defined in section 260E.2 and "base employment level" means the number of full-time jobs an industry employs at the plant site which is covered by an agreement under chapter 260E on the date of that agreement.

7. a. There is allowed as a credit against the tax determined in subsection 1 for a tax year an amount equal to the minimum tax credit for that tax year.

The minimum tax credit for a tax year is the excess, if any, of the adjusted net minimum tax imposed for all prior tax years beginning on or after January 1, 1987, over the amount allowable as a credit under this subsection for those prior tax years.

b. The allowable credit under paragraph "a" for a tax year shall not exceed the excess, if any, of the tax determined in subsection 1 over the state alternative minimum tax as determined in subsection 4.

The net minimum tax for a tax year is the excess, if any, of the tax determined in subsection 4 for the tax year over the tax determined in subsection 1 for the tax year.

The adjusted net minimum tax for a tax year is the net minimum tax for the tax year reduced by the amount which would be the net minimum tax if the only item of tax preference taken into account was that described in paragraph (6) of section 57(a) of the Internal Revenue Code.

8. The taxes imposed under this division shall be reduced by a seed capital credit.

a. The amount of the credit is equal to ten percent of a taxpayer's investment, during the tax year, in an initial offering of securities by a qualified business or a qualified seed capital fund.

b. A seed capital fund, to be a qualified seed capital fund under this section, must meet all of the following conditions:

(1) The investment must be in shares or other equity interests, which are purchased for money consideration and carry voting rights.

(2) The issue of shares or other equity interests must be registered under an expedited registration by filing system as provided in section 502.207A.

(3) Its capital base must be used to make investments exclusively in the types of businesses described in paragraph "c", subparagraph (1).

(4) Its capital base must be used to make qualified investments according to the following schedule:

(a) Invest at least thirty percent of its capital base, raised through investments for which tax credits were taken, within three years of the fiscal year in which tax credits were claimed.

(b) Invest at least fifty percent of its capital base, raised through investments for which tax credits were taken, within four years of the fiscal year in which tax credits were claimed.

(c) Invest at least seventy percent of its capital base, raised through investments for which tax credits were taken, within five years of the fiscal year in which tax credits were claimed.

(5) More than twenty percent of the total funds raised for which tax credits were claimed must not be invested in any one qualifying business.

c. A business, to be a qualified business under this subsection, must meet all of the following conditions:

(1) The business must be engaged in one or more of the following activities:

(a) Interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products.

(b) Agricultural, fishery, or forestry processing.

(c) Research and development of products and processes associated with any of the activities enumerated in subparagraph subdivision (a) or (b).

(2) The shares must be purchased for money consideration and carry full voting rights.

(3) The shares must be sold in an offering registered under an expedited registration by filing system as provided in section 502.207A.

d. If during the tax year, the investment or a portion of the investment is disposed of prior to having been owned by the taxpayer for two years, the tax under this division is increased by the amount of the credit taken on the investment or portion of the investment.

e. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier.

f. An investment in securities offered by a seed capital fund or qualified business qualifies for a tax credit only if the investment is in an unaffiliated and unrelated person, partnership, or corporation.

g. The director may conduct an examination of a seed capital fund or business to determine if it has met the requirements of this subsection. The director may request and if requested shall receive the assistance of the administrator of chapter 502 to conduct an examination of a seed capital fund or business.

h. The issuer must file a copy of its annual report with the director and the administrator of chapter 502 for each of the three years following the offering.

i. A violation of this subsection is grounds for decertification of a seed capital fund or business as a qualified seed capital fund or a qualified business. A seed capital fund or a business alleged to have violated this subsection, or to be out of compliance with this subsection, shall be allowed a one hundred twenty day grace period to remedy the violation or to comply with this subsection. Decertification shall cause the forfeiture of any right or interest to a tax credit under this subsection and shall cause the total amount of tax credit for all tax years under this subsection to be due and payable with income tax liability for the tax year when decertification is effective.

95 Acts, ch 83, §4; 95 Acts, ch 152, §5

1995 amendment to subsection 1, unnumbered paragraph 2, is retroactive to January 1, 1995, for tax years beginning on or after that date; 95 Acts, ch 83, §35

1995 amendment to subsection 5, unnumbered paragraph 1, is retroactive to January 1, 1994, for tax years beginning on or after that date; 95 Acts, ch 152, §7

Subsection 1, unnumbered paragraph 2 amended

Subsection 5, unnumbered paragraph 1 amended

422.35 Net income of corporation — how computed.

The term "*net income*" means the taxable income before the net operating loss deduction, as properly computed for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

1. Subtract interest and dividends from federal securities.

2. Add interest and dividends from foreign securities, from securities of state and other political subdivisions, and from regulated investment companies exempt from federal income tax under the Internal Revenue Code.

3. Where the net income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules and regulations prescribed by the director, to reflect the difference resulting from the use of a basis of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid.

4. Subtract fifty percent of the federal income taxes paid or accrued, as the case may be, during the tax year, adjusted by any federal income tax refunds; and add the Iowa income tax deducted in computing said taxable income.

5. Subtract the amount of the jobs tax credit allowable for the tax year under section 51 of the Internal Revenue Code to the extent that the credit increased federal taxable income.

6. If the taxpayer is a small business corporation, subtract an amount equal to sixty-five percent of the wages paid to individuals, but not to exceed twenty thousand dollars per individual, named in paragraphs "a", "b", and "c" who were hired for the first time by the taxpayer during the tax year for work done in this state:

a. A handicapped individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has a physical or mental impairment which substantially limits one or more major life activities.

(2) Has a record of that impairment.

(3) Is regarded as having that impairment.

b. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to chapter 906.

(3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to chapter 904, division IX.

c. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or

probation and to whom the interstate probation and parole compact under section 907A.1 applies.

This deduction is allowed for the wages paid to the individuals successfully completing a probationary period named in paragraphs "a", "b", and "c" during the twelve months following the date of first employment by the taxpayer and shall be deducted in the tax years when paid.

For purposes of this subsection, "*physical or mental impairment*" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems or any mental or psychological disorder, including mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

For purposes of this subsection, "*small business*" means small business as defined in section 16.1, subsection 36, except that it shall also include the operation of a farm.

6A. If the taxpayer is a business corporation and does not qualify for the adjustment under section 422.35, subsection 6, subtract an amount equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraphs "a" and "b" who were hired for the first time by the taxpayer during the tax year for work done in this state:

a. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to chapter 906.

(3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to chapter 904, division IX.

b. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1 applies.

This deduction is allowed for the wages paid to the individuals successfully completing a probationary period named in paragraphs "a" and "b" during the twelve months following the date of first employment by the taxpayer and shall be deducted in the tax years when paid.

The department shall develop and distribute information concerning the deduction available for businesses employing persons named in paragraphs "a" and "b".

7. Subtract the amount of the alcohol fuel credit allowable for the tax year under section 40 of the Internal Revenue Code to the extent that the credit increased federal taxable income.

8. Add the amounts deducted and subtract the amounts included in income as a result of the treatment provided sale-leaseback agreements under section 168f(8) of the Internal Revenue Code for property placed in service by the transferee prior to January 1, 1986 to the extent that the amounts deducted and the amounts included in income are not

otherwise deductible or included in income under the other provisions of the Internal Revenue Code as amended to and including December 31, 1985. Entitlement to depreciation on any property involved in a sale-leaseback agreement which is placed in service by the transferee prior to January 1, 1986 shall be determined under the Internal Revenue Code as amended to and including December 31, 1985, excluding section 168(f)(8) in making the determination.

9. Reserved.

10. Add the percentage depletion amount determined with respect to an oil, gas, or geothermal well using methods in section 613 of the Internal Revenue Code that is in excess of the cost depletion amount determined under section 611 of the Internal Revenue Code.

11. If after applying all of the adjustments provided for in this section and the allocation and apportionment provisions of section 422.33, the Iowa taxable income results in a net operating loss, such net operating loss shall be deducted as follows:

a. The Iowa net operating loss shall be carried back three taxable years or to the taxable year in which the corporation first commenced doing business in this state, whichever is later.

b. The Iowa net operating loss remaining after being carried back as required in paragraph "a" of this subsection or if not required to be carried back shall be carried forward fifteen taxable years.

c. If the election under section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward fifteen taxable years.

d. No portion of a net operating loss which was sustained from that portion of the trade or business carried on outside the state of Iowa shall be deducted.

e. The limitations on net operating loss carryback and carryforward under sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code shall apply.

Provided, however, that a corporation affected by the allocation provisions of section 422.33 shall be permitted to deduct only such portion of the deductions for net operating loss and federal income taxes as is fairly and equitably allocable to Iowa, under rules prescribed by the director.

12. Subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under section 852(b)(4)(B) of the Internal Revenue Code.

13. Subtract the interest earned from bonds and notes issued by the agricultural development authority as provided in section 175.17, subsection 10.

14. Reserved.

15. To the extent not otherwise included pursuant to section 164 of the Internal Revenue Code, subtract the amount of the annual registration fee paid for a multipurpose vehicle pursuant to section 321.124, subsection 3, paragraph "h", which is based upon the value of the vehicle. For purposes of this subsection, sixty percent of the amount of the registration fee is based upon the value of the vehicle.

16. Add depreciation taken for federal income tax purposes on a speculative shell building defined in section 427.1, subsection 41, which is owned by a for-profit entity and the for-profit entity is receiving the proper tax exemption. Subtract depreciation computed as if the speculative shell building were classified as fifteen-year property during the period during which it is owned by the taxpayer and is receiving the property tax exemption. However, this subsection does not apply to a speculative shell building which is used by the taxpayer, subsidiary of the taxpayer, or majority owners of the taxpayer, for other than as a speculative shell building, as defined in section 427.1, subsection 41.

17. Subtract the amount of the employer social security credit allowable for the tax year under section 45B of the Internal Revenue Code to the extent that the credit increases federal adjusted gross income.

95 Acts, ch 152, §6
Subsection 17 is retroactive to January 1, 1994, for tax years beginning on or after that date; 95 Acts, ch 152, §7
NEW subsection 17

422.42 Definitions.

The following words, terms, and phrases, when used in this division, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "*Agricultural production*" includes the production of flowering, ornamental, or vegetable plants in commercial greenhouses or otherwise. "*Agricultural products*" include flowering, ornamental, or vegetable plants.

2. "*Business*" includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit, or advantage, either direct or indirect.

3. "*Casual sales*" means:

a. Sales or the rendering, furnishing or performing of a nonrecurring nature of tangible personal property or services by the owner, if the seller, at the time of the sale, is not engaged for profit in the business of selling tangible personal property or services taxed under section 422.43.

b. The sale of all or substantially all of the tangible personal property or services held or used by a retailer in the course of the retailer's trade or business for which the retailer is required to hold a sales tax permit when the retailer sells or otherwise transfers the trade or business to another person who shall engage in a similar trade or business.

4. "*Farm machinery and equipment*" means machinery and equipment used in agricultural production.

5. "*Gross receipts*" means the total amount of the sales of retailers, valued in money, whether received in money or otherwise; provided, however,

a. That discounts for any purpose allowed and taken on sales shall not be included if excessive sales tax is not collected from the purchaser, nor shall the sale price of property returned by customers when the total sale price thereof is refunded either in cash or by credit.

b. That in transactions in which tangible personal property is traded toward the purchase price of other tangible personal property the gross receipts are only that portion of the purchase price which is payable in money to the retailer if the following conditions are met:

(1) The tangible personal property traded to the retailer is the type of property normally sold in the regular course of the retailer's business.

(2) The tangible personal property traded to the retailer is intended by the retailer to be ultimately sold at retail or is intended to be used by the retailer or another in the remanufacturing of a like item.

6. "Gross taxable services" means the total amount received in money, credits, property, or other consideration, valued in money, from services rendered, furnished, or performed in this state except where such service is performed on tangible personal property delivered into interstate commerce or is used in processing of tangible personal property for use in taxable retail sales or services and embraced within the provisions of this division. However, the taxpayer may take credit in the taxpayer's report of gross taxable services for an amount equal to the value of services rendered, furnished, or performed when the full value of such services thereof is refunded either in cash or by credit. Taxes paid on gross taxable services represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax due hereunder, but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amounts so collected.

7. "Nonresidential commercial operations" means industrial, commercial, mining, and agricultural operations, whether for profit or not, but does not include apartment complexes and mobile home parks.

8. "Place of business" shall mean any warehouse, store, place, office, building or structure where goods, wares or merchandise are offered for sale at retail or where any taxable amusement is conducted or each office where gas, water, heat, communication or electric services are offered for sale at retail.

9. Where a retailer or amusement operator sells merchandise by means of vending machines or operates music or amusement devices by coin-operated machines at more than one location within the state, the office, building or place where the books, papers and records of the taxpayer are kept shall be deemed to be the taxpayer's place of business.

10. "Property purchased for resale in connection with the performance of a service" means property which is purchased for resale in connection with the performance of a service by a person who renders, furnishes, or performs the service if all of the following occur:

a. The provider and user of the service intend that a sale of the property will occur.

b. The property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value.

c. The sale is evidenced by a separate charge for the identifiable piece of property.

11. "Person" includes any individual, firm, co-partnership, joint adventure, association, corporation, municipal corporation, estate, trust, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.

12. "Relief agency" means the state, any county, city and county, city or district thereof, or any agency engaged in actual relief work.

13. "Retailer" includes every person engaged in the business of selling tangible goods, wares, merchandise or taxable services at retail, or the furnishing of gas, electricity, water, and communication service, and tickets or admissions to places of amusement and athletic events as provided in this division or operating amusement devices or other forms of commercial amusement from which revenues are derived; provided, however, that when in the opinion of the director it is necessary for the efficient administration of this division to regard any salespersons, representatives, truckers, peddlers, or canvassers, as agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain tangible personal property sold by them irrespective of whether or not they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them, and may regard such dealers, distributors, supervisors, employers, or persons as retailers for the purposes of this division.

14. "Retail sale" or "sale at retail" means the sale to a consumer or to any person for any purpose, other than for processing, for resale of tangible personal property or taxable services, or for resale of tangible personal property in connection with taxable services; and includes the sale of gas, electricity, water, and communication service to retail consumers or users; but does not include agricultural breeding livestock and domesticated fowl; and does not include commercial fertilizer, agricultural limestone, herbicide, pesticide, insecticide, food, medication, or agricultural drain tile, including installation of agricultural drain tile, any of which are to be used in disease control, weed control, insect control, or health promotion of plants or livestock produced as part of agricultural production for market; and does not include electricity, steam, or any taxable service when purchased and used in the processing of tangible personal property intended to be sold ultimately at retail. When used by a manufacturer of food products, carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and other taxable services are sold for processing when used to produce marketable food products for human consumption, including but not limited to, treatment of material to change its form, context, or condition, in order to produce the food product, maintenance of quality or integrity of the food product, changing or maintenance of temperature levels necessary to avoid spoilage or to hold the food product in marketable condition, maintenance

of environmental conditions necessary for the safe or efficient use of machinery and material used to produce the food product, sanitation and quality control activities, formation of packaging, placement into shipping containers, and movement of the material or food product until shipment from the building of manufacture. Tangible personal property is sold for processing within the meaning of this subsection only when it is intended that the property will, by means of fabrication, compounding, manufacturing, or germination become an integral part of other tangible personal property intended to be sold ultimately at retail; or will be consumed as fuel in creating heat, power, or steam for processing including grain drying, or for providing heat or cooling for livestock buildings or for greenhouses or buildings or parts of buildings dedicated to the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business, or for generating electric current, or in implements of husbandry engaged in agricultural production; or the property is a chemical, solvent, sorbent, or reagent, which is directly used and is consumed, dissipated, or depleted, in processing personal property which is intended to be sold ultimately at retail or consumed in the maintenance or repair of fabric or clothing, and which may not become a component or integral part of the finished product. The distribution to the public of free newspapers or shoppers guides is a retail sale for purposes of the processing exemption.

15. Sales of building materials, supplies, and equipment to owners, contractors, subcontractors or builders, for the erection of buildings or the alteration, repair, or improvement of real property, are retail sales in whatever quantity sold. Where the owner, contractor, subcontractor, or builder is also a retailer holding a retail sales tax permit and transacting retail sales of building materials, supplies, and equipment, the person shall purchase such items of tangible personal property without liability for the tax if such property will be subject to the tax at the time of resale or at the time it is withdrawn from inventory for construction purposes. The sales tax shall be due in the reporting period when the materials, supplies, and equipment are withdrawn from inventory for construction purposes or when sold at retail. The tax shall not be due when materials are withdrawn from inventory for use in construction outside of Iowa and the tax shall not apply to tangible personal property purchased and consumed by the manufacturer as building materials in the performance by the manufacturer or its subcontractor of construction outside of Iowa.

For the purposes of this subsection, the sale of carpeting is not a sale of building materials. The sale of carpeting to owners, contractors, subcontractors, or builders shall be treated as the sale of ordinary tangible personal property and subject to the tax imposed under section 422.43, subsection 1, and the tax imposed under section 423.2.

16. The use within this state of tangible personal property by the manufacturer thereof, as building

materials, supplies, or equipment, in the performance of construction contracts in Iowa, shall, for the purpose of this division, be construed as a sale at retail thereof by the manufacturer who shall be deemed to be the consumer of such tangible personal property. The tax shall be computed upon the cost to the manufacturer of the fabrication or production thereof.

17. "Sales" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

18. "Services" means all acts or services rendered, furnished, or performed, other than services performed on tangible personal property delivered into interstate commerce, or services used in processing of tangible personal property for use in taxable retail sales or services, for an "employer" as defined in section 422.4, subsection 3, for a valuable consideration by any person engaged in any business or occupation specifically enumerated in this division. The tax shall be due and collectible when the service is rendered, furnished, or performed for the ultimate user thereof.

"Services used in the processing of tangible personal property" includes the reconditioning or repairing of tangible personal property of the type normally sold in the regular course of the retailer's business and which is held for sale.

19. The word "taxpayer" includes any person within the meaning of subsection 11 hereof, who is subject to a tax imposed by this division, whether acting on the person's own behalf or as a fiduciary.

20. "User" means the immediate recipient of the services who is entitled to exercise a right of power over the product of such services.

21. "Value of services" means the price to the user exclusive of any direct tax imposed by the federal government or by this division.

95 Acts, ch 174, §1, 2
NEW Subsections 1 and 4 and former subsections 1 and 2 and 3-18
renumbered as 2 and 3 and 5-21
Subsection 14 amended

422.43 Tax imposed.

1. There is imposed a tax of five percent upon the gross receipts from all sales of tangible personal property, consisting of goods, wares, or merchandise, except as otherwise provided in this division, sold at retail in the state to consumers or users; a like rate of tax upon the gross receipts from the sales, furnishing, or service of gas, electricity, water, heat, pay television service, and communication service, including the gross receipts from such sales by any municipal corporation or joint water utility furnishing gas, electricity, water, heat, pay television service, and communication service to the public in its proprietary capacity, except as otherwise provided in this division, when sold at retail in the state to consumers or users; a like rate of tax upon the gross receipts from all sales of tickets or admissions to places of amusement, fairs, and athletic events except those of elementary and secondary educational institutions; a like rate of tax on the gross receipts

from an entry fee or like charge imposed solely for the privilege of participating in an activity at a place of amusement, fair, or athletic event unless the gross receipts from the sales of tickets or admissions charges for observing the same activity are taxable under this division; and a like rate of tax upon that part of private club membership fees or charges paid for the privilege of participating in any athletic sports provided club members.

2. There is imposed a tax of five percent upon the gross receipts derived from the operation of all forms of amusement devices and games of skill, games of chance, raffles, and bingo games as defined in chapter 99B, operated or conducted within the state, the tax to be collected from the operator in the same manner as for the collection of taxes upon the gross receipts of tickets or admission as provided in this section. The tax shall also be imposed upon the gross receipts derived from the sale of lottery tickets or shares pursuant to chapter 99E. The tax on the lottery tickets or shares shall be included in the sales price and distributed to the general fund as provided in section 99E.10.

3. The tax thus imposed covers all receipts from the operation of games of skill, games of chance, raffles and bingo games as defined in chapter 99B, and musical devices, weighing machines, shooting galleries, billiard and pool tables, bowling alleys, pinball machines, slot-operated devices selling merchandise not subject to the general sales taxes and on all receipts from devices or systems where prizes are in any manner awarded to patrons and upon the receipts from fees charged for participation in any game or other form of amusement, and generally upon the gross receipts from any source of amusement operated for profit, not specified in this section, and upon the gross receipts from which no tax is collected for tickets or admission, but no tax shall be imposed upon any activity exempt from sales tax under section 422.45, subsection 3. Every person receiving gross receipts from the sources defined in this section is subject to all provisions of this division relating to retail sales tax and other provisions of this chapter as applicable.

4. There is imposed a tax of five percent upon the gross receipts from the sales of engraving, photography, retouching, printing, and binding services. For the purpose of this division, the sales of engraving, photography, retouching, printing, and binding services are sales of tangible property.

5. There is imposed a tax of five percent upon the gross receipts from the sales of vulcanizing, recapping, and retreading services. For the purpose of this division, the sales of vulcanizing, recapping, and retreading services are sales of tangible property.

6. There is imposed a tax of five percent upon the gross receipts from the sales of optional service or warranty contracts, except residential service contracts regulated under chapter 523C, which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under this section. The gross receipts are subject to

tax even if some of the services furnished are not enumerated under this section. For the purpose of this division, the sale of an optional service or warranty contract, other than a residential service contract regulated under chapter 523C, is a sale of tangible personal property. Additional sales, services, or use taxes shall not be levied on services, parts, or labor provided under optional service or warranty contracts which are subject to tax under this section.

7. There is imposed a tax of five percent upon the gross receipts from the renting of rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, mobile home which is tangible personal property, or tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals. "Renting" and "rent" include any kind of direct or indirect charge for such rooms, apartments, or sleeping quarters, or their use. For the purposes of this division, such renting is regarded as a sale of tangible personal property at retail. However, this tax does not apply to the gross receipts from the renting of a room, apartment, or sleeping quarters while rented by the same person for a period of more than thirty-one consecutive days.

8. All revenues arising under the operation of the provisions of this section shall become part of the state general fund.

9. Nothing herein shall legalize any games of skill or chance or slot-operated devices which are now prohibited by law.

10. There is imposed a tax of five percent upon the gross receipts from the rendering, furnishing, or performing of services as defined in section 422.42.

11. The following enumerated services are subject to the tax imposed on gross taxable services: alteration and garment repair; armored car; vehicle repair; battery, tire, and allied; investment counseling; service charges of all financial institutions; barber and beauty; boat repair; vehicle wash and wax; carpentry; roof, shingle, and glass repair; dance schools and dance studios; dating services; dry cleaning, pressing, dyeing, and laundering; electrical and electronic repair and installation; rental of tangible personal property, except mobile homes which are tangible personal property; excavating and grading; farm implement repair of all kinds; flying service; furniture, rug, upholstery repair and cleaning; fur storage and repair; golf and country clubs and all commercial recreation; house and building moving; household appliance, television, and radio repair; jewelry and watch repair; limousine service, including driver; machine operator; machine repair of all kinds; motor repair; motorcycle, scooter, and bicycle repair; oilers and lubricators; office and business machine repair; painting, papering, and interior decorating; parking facilities; pipe fitting and plumbing; wood preparation; licensed executive search agencies; private employment agencies, excluding services for placing a person in employment where the principal place of employment of that person is to

be located outside of the state; sewage services for nonresidential commercial operations; sewing and stitching; shoe repair and shoeshine; sign construction and installation; storage of household goods, mini-storage, and warehousing of raw agricultural products; swimming pool cleaning and maintenance; taxidermy services; telephone answering service; test laboratories, including mobile testing laboratories and field testing by testing laboratories, and excluding tests on humans or animals; termite, bug, roach, and pest eradicators; tin and sheet metal repair; turkish baths, massage, and reducing salons; weighing; welding; well drilling; wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl and vegetables; wrecking service; wrecker and towing; pay television; campgrounds; carpet and upholstery cleaning; gun and camera repair; janitorial and building maintenance or cleaning; lawn care, landscaping and tree trimming and removal; pet grooming; reflexology; security and detective services; tanning beds or salons; and water conditioning and softening.

For purposes of this subsection, gross taxable services from rental includes rents, royalties, and copyright and license fees. For purposes of this subsection, "financial institutions" means all national banks, federally chartered savings and loan associations, federally chartered savings banks, federally chartered credit unions, banks organized under chapter 524, savings and loan associations and savings banks organized under chapter 534, and credit unions organized under chapter 533.

12. Reserved.

13. a. A tax of five percent is imposed upon the gross receipts from the sales, furnishing, or service of solid waste collection and disposal service.

For purposes of this subsection, "solid waste" means garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from nonresidential commercial operations, but does not include auto hulks; street sweepings; ash; construction debris; mining waste; trees; tires; lead acid batteries; used oil; hazardous waste; animal waste used as fertilizer; earthen fill, boulders, rock; foundry sand used for daily cover at a sanitary landfill; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents or discharges which are point sources subject to permits under section 402 of the federal Water Pollution Control Act, dissolved materials in irrigation return flows; or source, special nuclear, or by-product material defined by the federal Atomic Energy Act of 1954.

A recycling facility that separates or processes recyclable materials and that reduces the volume of the waste by at least eighty-five percent is exempt from the tax imposed by this subsection if the waste exempted is collected and disposed of separately from other solid waste.

b. A person who transports solid waste generated by that person or another person without compensation shall pay the tax imposed by this subsection at the collection or disposal facility based on the disposal charge or tipping fee. However, the costs of a service or portion of a service to collect and manage recyclable materials separated from solid waste by the waste generator is exempt from the tax imposed by this subsection.

95 Acts, ch 83, §5, 6; 95 Acts, ch 187, §1

Subsection 6 amended

Subsection 11, unnumbered paragraph 1 amended

Subsection 12 stricken

422.45 Exemptions.

There are hereby specifically exempted from the provisions of this division and from the computation of the amount of tax imposed by it, the following:

1. The gross receipts from sales of tangible personal property and services rendered, furnished, or performed, which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state.

2. The gross receipts from the sales, furnishing, or service of transportation service except the rental of recreational vehicles or recreational boats, except the rental of motor vehicles subject to registration which are registered for a gross weight of thirteen tons or less for a period of sixty days or less, and except the rental of aircraft for a period of sixty days or less.

3. The gross receipts from sales of educational, religious, or charitable activities, where the entire proceeds from the sales are expended for educational, religious, or charitable purposes, except the gross receipts from games of skill, games of chance, raffles and bingo games as defined in chapter 99B. This exemption is disallowed on the amount of the gross receipts only to the extent the gross receipts are not expended for educational, religious, or charitable purposes.

4. The gross receipts from sales of vehicles subject to registration or subject only to the issuance of a certificate of title.

5. The gross receipts from services rendered, furnished, or performed and of all sales of goods, wares, or merchandise used for public purposes to a tax-certifying or tax-levying body of the state or a governmental subdivision of the state, including regional transit systems, as defined in section 324A.1, the state board of regents, department of human services, state department of transportation, any municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility, and all divisions, boards, commissions, agencies, or instrumentalities of state, federal, county, or municipal government which have no earnings going to the benefit of an equity investor or stockholder, except sales of goods, wares, or merchandise or from services rendered, furnished, or performed and used by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity, heat, or pay

television service to the general public; except the sales, furnishing or providing of sewage services to a county or municipality on behalf of nonresidential commercial operations; and except the sales, furnishing, or service of solid waste collection and disposal service to a county or municipality on behalf of nonresidential commercial operations located within the county or municipality.

The exemption provided by this subsection shall also apply to all such sales of goods, wares or merchandise or from services rendered, furnished, or performed and subject to use tax under the provisions of chapter 423.

6. The gross receipts from "casual sales". However, this exemption does not apply to aircraft.

7. A private nonprofit educational institution in this state, nonprofit private museum, tax-certifying or tax-levying body or governmental subdivision of the state, including the state board of regents, state department of human services, state department of transportation, a municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility, and all divisions, boards, commissions, agencies, or instrumentalities of state, federal, county, or municipal government which do not have earnings going to the benefit of an equity investor or stockholder, may make application to the department for the refund of the sales, services, or use tax upon the gross receipts of all sales of goods, wares, or merchandise, or from services rendered, furnished, or performed, to a contractor, used in the fulfillment of a written contract with the state of Iowa, any political subdivision of the state, or a division, board, commission, agency, or instrumentality of the state or a political subdivision, a private nonprofit educational institution in this state, or a nonprofit private museum if the property becomes an integral part of the project under contract and at the completion of the project becomes public property, is devoted to educational uses, or becomes a nonprofit private museum; except goods, wares, or merchandise, or services rendered, furnished, or performed used in the performance of any contract in connection with the operation of any municipal utility engaged in selling gas, electricity, or heat to the general public or in connection with the operation of a municipal pay television system; and except goods, wares, and merchandise used in the performance of a contract for a "project" under chapter 419 as defined in that chapter other than goods, wares, or merchandise used in the performance of a contract for a "project" under chapter 419 for which a bond issue was approved by a municipality prior to July 1, 1968, or for which the goods, wares, or merchandise becomes an integral part of the project under contract and at the completion of the project becomes public property or is devoted to educational uses.

a. Such contractor shall state under oath, on forms provided by the department, the amount of such sales of goods, wares or merchandise or services rendered, furnished, or performed and used in the performance of such contract, and upon which sales

or use tax has been paid, and shall file such forms with the governmental unit, private nonprofit educational institution, or nonprofit private museum which has made any written contract for performance by the contractor. The forms shall be filed by the contractor with the governmental unit, educational institution, or nonprofit private museum before final settlement is made.

b. Such governmental unit, educational institution, or nonprofit private museum shall, not more than six months after the final settlement has been made, make application to the department for any refund of the amount of such sales or use tax which shall have been paid upon any goods, wares or merchandise, or services rendered, furnished, or performed, such application to be made in the manner and upon forms to be provided by the department, and the department shall forthwith audit such claim and, if approved, issue a warrant to such governmental unit, educational institution, or nonprofit private museum in the amount of such sales or use tax which has been paid to the state of Iowa under such contract.

Refunds authorized under this subsection shall accrue interest at the rate in effect under section 421.7 from the first day of the second calendar month following the date the refund claim is received by the department.

c. Any contractor who shall willfully make false report of tax paid under the provisions of this subsection shall be guilty of a simple misdemeanor and in addition thereto shall be liable for the payment of the tax and any applicable penalty and interest.

8. The gross receipts of all sales of goods, wares, or merchandise, or services, used for educational purposes to any private nonprofit educational institution in this state. The exemption provided by this subsection shall also apply to all such sales of goods, wares or merchandise, or services, subject to use tax under the provisions of chapter 423.

9. Gross receipts from the sales of newspapers, free newspapers or shoppers guides and the printing and publishing thereof, and envelopes for advertising.

10. The gross receipts from sales of tangible personal property used or to be used as railroad rolling stock for transporting persons or property, or as materials or parts therefor.

11. The gross receipts from the sale of motor fuel and special fuel consumed for highway use or in watercraft or aircraft where the fuel tax has been imposed and paid and no refund has been or will be allowed and the gross receipts from the sales of ethanol blended gasoline, as defined in section 452A.2.

12. Gross receipts from the sale of all foods for human consumption which are eligible for purchase with food coupons issued by the United States department of agriculture pursuant to regulations in effect on July 1, 1974, regardless of whether the retailer from which the foods are purchased is participating in the food stamp program. However, as

used in this subsection, "foods" does not include candy, candy-coated items, and other candy products; beverages, excluding tea and coffee, and all mixes and ingredients used to produce such beverages, which do not contain a primary dairy product or dairy ingredient base or which contain less than fifteen percent natural fruit or vegetable juice; foods prepared on or off the premises of the retailer which are consumed on the premises of the retailer; foods sold by caterers and hot or cold foods prepared for immediate consumption off the premises of the retailer. "Foods prepared for immediate consumption" include any food product upon which an act of preparation, including but not limited to, cooking, mixing, sandwich making, blending, heating or pouring, has been performed by the retailer so the food product may be immediately consumed by the purchaser.

12A. The gross receipts from the sale of foods purchased with coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. § 2011, et seq.

13. The gross receipts from the sale or rental of prescription drugs or medical devices intended for human use or consumption.

For the purposes of this subsection:

a. "Medical device" means equipment or a supply, intended to be prescribed by a practitioner, including orthopedic or orthotic devices. However, "medical device" also includes prosthetic devices, ostomy, urological, and tracheostomy equipment and supplies, and diabetic testing materials, hypodermic syringes and needles, anesthesia trays, biopsy trays and biopsy needles, cannula systems, catheter trays and invasive catheters, dialyzers, drug infusion devices, fistula sets, hemodialysis devices, insulin infusion devices, intraocular lenses, irrigation solutions, intravenous administering sets, solutions and stopcocks, myelogram trays, nebulizers, small vein infusion kits, spinal puncture trays, transfusion sets, venous blood sets, and oxygen equipment, intended to be dispensed for human use with or without a prescription to an ultimate user.

b. "Practitioner" means a practitioner as defined in section 155A.3, or a person licensed to prescribe drugs.

c. "Prescription drug" means a drug intended to be dispensed to an ultimate user pursuant to a prescription drug order or medication order from a practitioner, or oxygen or insulin dispensed for human consumption with or without a prescription drug order or medication order.

d. "Ultimate user" means an individual who has lawfully obtained and possesses a prescription drug or medical device for the individual's own use or for the use of a member of the individual's household, or an individual to whom a prescription drug or medical device has been lawfully supplied, administered, dispensed, or prescribed.

13A. Reserved.

14. Reserved.

15. Reserved.

16. Reserved.

17. The gross receipts from the sale of horses,

commonly known as draft horses, when purchased for use and so used as a draft horse.

18. Gross receipts from the sale of tangible personal property, except vehicles subject to registration, to a person regularly engaged in the business of leasing if the period of the lease is for more than one year, or in the consumer rental purchase business if the property is to be utilized in a transaction involving a consumer rental purchase agreement as defined in section 537.3604, subsection 8, and the leasing or consumer rental of the property is subject to taxation under this division. If tangible personal property exempt under this subsection is made use of for any purpose other than leasing, renting, or consumer rental purchase, the person claiming the exemption under this subsection is liable for the tax that would have been due except for this subsection. The tax shall be computed upon the original purchase price. The aggregate of the tax paid on the leasing, renting, or rental purchase of such tangible personal property, not to exceed the amount of the sales tax owed, shall be credited against the tax. This sales tax is in addition to any sales or use tax that may be imposed as a result of the disposal of such tangible personal property.

19. The gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping paper, twine, bag, bottle, shipping case, or other similar article or receptacle sold to retailers or manufacturers for the purpose of packaging or facilitating the transportation of tangible personal property sold at retail or transferred in association with the maintenance or repair of fabric or clothing.*

20. The gross receipts from sales or services rendered, furnished, or performed by a county or city. This exemption does not apply to the tax specifically imposed under section 422.43 on the gross receipts from the sales, furnishing, or service of gas, electricity, water, heat, pay television service, and communication service to the public by a municipal corporation in its proprietary capacity; does not apply to the sales, furnishing, or service of solid waste collection and disposal service to nonresidential commercial operations; does not apply to the sales, furnishing, or service of sewage service for nonresidential commercial operations; and does not apply to fees paid to cities and counties for the privilege of participating in any athletic sports.

21. The gross receipts from sales or rentals to a printer or publisher of the following: acetate; anti-halation backing; anti-static spray; back lining; base material used as a carrier for light sensitive emulsions; blankets; blow-ups; bronze powder; carbon tissue; codas; color filters; color separations; contacts; continuous tone separations; creative art; custom dies and die cutting materials; dampener sleeves; dampening solution; design and styling; diazo coating; dot etching; dot etching solutions; drawings; drawsheets; driers; duplicate films or prints; electronically digitized images; electrotypes; end product of image modulation; engravings; etch solutions; film; finished art or final art; fix; fixative spray; flats;

flying pasters; foils; goldenrod paper; gum; halftones; illustrations; ink; ink paste; keylines; lacquer; laser- ing images; layouts; lettering; line negatives and positives; linotypes; lithographic offset plates; mag- nesium and zinc etchings; masking paper; masks; masters; mats; mat service; metal toner; models, modeling; mylar; negatives; nonoffset spray; opaque film process paper; opaquing; padding compound; paper stock; photographic materials: acids, plastic film, desensitizer emulsion, exposure chemicals, fix, developers, paper; photography, day rate; photopoly- mer coating; photographs; photostats; photo-display tape; phototypesetter materials; ph-indicator sticks; positives; press pack; printing cylinders; printing plates, all types; process lettering; proof paper; proofs and proof processes, all types; pumice powder; pur- chased author alterations; purchased composition; purchased phototypesetting; purchased stripping and paste-ups; red litho tape; reducers; roller cover- ing; screen tints; sketches; stepped plates; stereo- types; strip types; substrate; tints; tissue overlays; toners; transparencies; tympan; typesetting; typog- raphy; varnishes; veloxes; wood mounts; and any other items used in a like capacity to any of the above enumerated items by the printer or publisher to com- plete a finished product for sale at retail. Expendable tools and supplies which are not enumerated in this subsection are excluded from the exemption. "Printer" means that portion of a person's business engaged in printing that completes a finished product for ulti- mate sale at retail or means that portion of a person's business used to complete a finished printed pack- aging material used to package a product for ultimate sale at retail. "Printer" does not mean an in-house printer who prints or copyrights its own materials.

22. The gross receipts from the sale or rental of tangible personal property or from services per- formed, rendered, or furnished to the following non- profit corporations:

a. Residential care facilities and intermediate care facilities for the mentally retarded and residen- tial care facilities for the mentally ill licensed by the department of inspections and appeals under chapter 135C.

b. Residential facilities licensed by the depart- ment of human services pursuant to chapter 237, other than those maintained by individuals as de- fined in section 237.1, subsection 7.

c. Rehabilitation facilities that provide accred- ited rehabilitation services to persons with disabili- ties which are accredited by the commission on accreditation of rehabilitation facilities or the ac- creditation council for services for mentally retarded and other developmentally disabled persons and adult day care services approved for reimbursement by the state department of human services.

d. Community mental health centers accredited by the department of human services pursuant to chapter 225C.

e. Community health centers as defined in 42 U.S.C.A. § 254c and migrant health centers as de- fined in 42 U.S.C.A. § 254b.

23. The gross receipts from the sales of special fuel for diesel engines consumed or used in the op- eration of ships, barges, or waterborne vessels which are used primarily in or for the transportation of property or cargo, or the conveyance of persons for hire on rivers bordering on the state if the fuel is delivered by the seller to the purchaser's barge, ship, or waterborne vessel while it is afloat upon such a river.

24. The gross receipts from the rental of motion picture films, video and audio tapes, video and audio discs, records, photos, copy, scripts or other media used for the purpose of transmitting that which can be seen, heard or read, if either of the following conditions are met:

a. The lessee imposes a charge for the viewing or the rental of such media and the charge for the viewing or the rental is subject to taxation under this division or chapter 423.

b. The lessee broadcasts the contents of such media for public viewing or listening.

The exemption provided for in this subsection ap- plies to all payments on or after July 1, 1984.

25. The gross receipts from services rendered, furnished or performed by specialized flying imple- ments of husbandry used for agricultural aerial spraying and aerial commercial and charter trans- portation services.

26. The gross receipts from the sale or rental of farm machinery and equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the machinery and equip- ment and replacement parts, if the following condi- tions are met:

a. The farm machinery and equipment shall be directly and primarily used in production of agricul- tural products.

b. The farm machinery and equipment shall con- stitute self-propelled implements or implements cus- tomarily drawn or attached to self-propelled implements or the farm machinery or equipment is a grain dryer.

c. The replacement part is essential to any repair or reconstruction necessary to the farm machinery's or equipment's exempt use in the production of ag- ricultural products.

Vehicles subject to registration, as defined in sec- tion 423.1, or replacement parts for such vehicles, shall not be eligible for this exemption.

27. The gross receipts from the sale or rental, on or after July 1, 1987 or on or after July 1, 1985, in the case of an industry which has entered into an agree- ment under chapter 260E prior to the sale or lease, of industrial machinery, equipment and computers, including replacement parts which are depreciable for state and federal income tax purposes, if the following conditions are met:

a. The industrial machinery, equipment and com- puters shall be directly and primarily used in the manner described in section 428.20 in processing tangible personal property or in research and devel- opment of new products or processes of manufactur-

ing, refining, purifying, combining of different materials or packing of meats to be used for the purpose of adding value to products, or in processing or storage of data or information by an insurance company, financial institution or commercial enterprise, or in the recycling or reprocessing of waste products. As used in this paragraph:

(1) "Insurance company" means an insurer organized or operating under chapters 508, 514, 515, 518, 519, 520 or authorized to do business in Iowa as an insurer and having fifty or more persons employed in this state excluding licensed insurance agents.

(2) "Financial institutions" means as defined in section 527.2, subsection 9.

(3) "Commercial enterprise" includes businesses and manufacturers conducted for profit and includes centers for data processing services to insurance companies, financial institutions, businesses and manufacturers but excludes professions and occupations and nonprofit organizations.

b. The industrial machinery, equipment and computers must be real property within the scope of section 427A.1, subsection 1, paragraphs "e" or "j", and must be subject to taxation as real property. This paragraph does not apply to machinery and equipment used in the recycling or reprocessing of waste products qualifying for an exemption under paragraph "a".

However, the provisions of chapters 404 and 427B which result in the exemption from taxation of property for property tax purposes do not preclude the property from receiving this exemption if the property otherwise qualifies.

The gross receipts from the sale or rental of hand tools are not exempt. The gross receipts from the sale or rental of pollution control equipment qualifying under paragraph "a" shall be exempt.

The gross receipts from the sale or rental of industrial machinery, equipment, and computers, including pollution control equipment, within the scope of section 427A.1, subsection 1, paragraphs "h" and "i", shall not be exempt.

28. Reserved.

29. The gross receipts from the rendering, furnishing or performing of the following service: design and installation of new industrial machinery or equipment, including electrical and electronic installation.

30. The gross receipts from the sale of wood chips, sawdust, hay, straw, paper, or other materials used for bedding in the production of agricultural livestock or fowl.

31. Reserved.

32. Gross receipts from the sale of raffle tickets for a raffle licensed pursuant to section 99B.5.

33. The gross receipts from the sale of automotive fluids to a retailer to be used either in providing a service which includes the installation or application of the fluids in or on a motor vehicle, which service is subject to section 422.43, subsection 11, or to be installed in or applied to a motor vehicle which the retailer intends to sell, which sale is subject to section

423.7. For purposes of this subsection, automotive fluids are all those which are refined, manufactured or otherwise processed and packaged for sale prior to their installation in or application to a motor vehicle. They include but are not limited to motor oil and other lubricants, hydraulic fluids, brake fluid, transmission fluid, sealants, undercoatings, antifreeze and gasoline additives.

34. The gross receipts from the sale, furnishing, or service of gas, electricity, water, or heat to be used in implements of husbandry engaged in agricultural production.

35. The gross receipts from the sale of tangible personal property which will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in chapter 99B.

36. Gross receipts from the sale of tangible personal property to a nonprofit organization which was organized for the purpose of lending the tangible personal property to the general public for use by them for nonprofit purposes.

37. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to nonprofit legal aid organizations.

38. The gross receipts from the sale of aircraft for use in a scheduled interstate federal aviation administration certificated air carrier operation.

38A. The gross receipts from the sale or rental of aircraft; the sale or rental of tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and the gross receipts of all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, "aircraft" means aircraft used in a scheduled interstate federal aviation administration-certified air carrier operation.

39. The gross receipts from the sale or rental of farm machinery and equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the machinery and equipment and replacement parts, if all of the following conditions are met:

a. The implement, machinery, or equipment is directly and primarily used in livestock or dairy production or in the production of flowering, ornamental, or vegetable plants.

b. The implement is not a self-propelled implement or implement customarily drawn or attached to self-propelled implements.

c. The replacement part is essential to any repair or reconstruction necessary to the farm machinery's or equipment's exempt use in livestock or dairy production or in the production of flowering, ornamental, or vegetable plants.

40. The gross receipts from the sale of a modular home, as defined in section 435.1, to the extent of the portion of the purchase price of the modular home which is not attributable to the cost of the tangible

personal property used in the processing of the modular home. For purposes of this exemption, the portion of the purchase price which is not attributable to the cost of the tangible personal property used in the processing of the modular home is forty percent.

41. The gross receipts from the sale of motion picture films, video and audio tapes, video and audio discs and records, or other media which can be seen, heard, or read, to a person regularly engaged in the business of leasing, renting, or selling this property if the ultimate leasing, renting, or selling of the property is subject to tax under this division.

The exemption provided in this subsection is retroactive to July 1, 1984.

42. The gross receipts from the sale or rental of irrigation equipment used in farming operations.

43. The gross receipts of all sales of goods, wares, merchandise, or services, used for educational, scientific, historic preservation, or aesthetic purpose to a nonprofit private museum.

44. The gross receipts from the sale of tangible personal property or the sale, furnishing, or servicing of electrical energy, natural or artificial gas, or communication service to another state or political subdivision of another state if the other state provides a similar reciprocal exemption for this state and political subdivisions of this state.

45. The gross receipts from the sale of tangible personal property consisting of advertising material including paper to a person in Iowa if that person or that person's agent will, subsequent to the sale, send that advertising material outside this state and the material is subsequently used solely outside of Iowa. For the purpose of this subsection, "advertising material" means any brochure, catalog, leaflet, flyer, order form, return envelope, or similar item used to promote sales of property or services.

46. The gross receipts from the sale of property which the seller transfers to a carrier for shipment to a point outside of Iowa, places in the United States mail or parcel post directed to a point outside of Iowa, or transports to a point outside of Iowa by means of the seller's own vehicles, and which is not thereafter returned to a point within Iowa, except solely in the course of interstate commerce or transportation. This exemption shall not apply if the purchaser, consumer, or their agent, other than a carrier, takes physical possession of the property in Iowa.

47. The gross receipts from the rendering, furnishing, or performing of additional services taxed by 1992 Iowa Acts, chapter 1232, pursuant to a written service contract in effect on March 1, 1992. This exemption is repealed August 31, 1992.

48. The gross receipts from the sale of wind energy conversion property to be used as an electric power source and the sale of the materials used to manufacture, install, or construct wind energy conversion property used or to be used as an electric power source.

For purposes of this section, "wind energy conversion property" means any device, including, but not

limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation, which converts wind energy to a form of usable energy.

49. The gross receipts from services rendered, furnished, or performed, by the notification center established pursuant to section 480.3, and the vendor selected pursuant to section 480.3 to provide the notification service.

95 Acts, ch 8, § 1, 2; 95 Acts, ch 83, § 7; 95 Acts, ch 142, § 1; 95 Acts, ch 150, § 1; 95 Acts, ch 154, § 1; 95 Acts, ch 174, § 3

*See 88 Acts, ch 1182, § 4 and 5, for amendment to subsection 19 and addition of subsections 19A and 19B, effective on a date to be established by rule of laboratory division of the department of agriculture and land stewardship upon determination that degradable products are available to a degree which makes compliance reasonably possible; 88 Acts, ch 1182, § 6; 89 Acts, ch 83, § 86

1995 amendment to subsection 21 applies retroactively to July 1, 1983, for sales and rentals made on or after that date; refund claims, limits; 95 Acts, ch 154, § 2, 3

1995 amendment adding subsection 38A applies retroactively to July 1, 1988; refund claims, limits; 95 Acts, ch 142, § 2, 3

Subsection 49 applies retroactively to tax years beginning on or after January 1, 1995; 95 Acts, ch 150, § 2

Subsection 7, paragraph b, NEW unnumbered paragraph 2

Subsection 21 stricken and rewritten

Subsection 26, unnumbered paragraph 1 amended

NEW subsection 38A

Subsection 39, unnumbered paragraph 1 amended

Subsection 39, paragraphs a and c amended

NEW subsection 49

422.47 Refunds — exemption certificates.

1. a. A relief agency may apply to the director for refund of the amount of tax imposed hereunder and paid upon sales to it of any goods, wares, merchandise, or services rendered, furnished, or performed, used for free distribution to the poor and needy.

b. Such refunds may be obtained only in the following amounts and manner and only under the following conditions:

(1) On forms furnished by the department, and filed within such time as the director shall provide by regulation, the relief agency shall report to the department the total amount or amounts, valued in money, expended directly or indirectly for goods, wares, merchandise, or services rendered, furnished, or performed, used for free distribution to the poor and needy.

(2) On these forms the relief agency shall separately list the persons making the sales to it or to its order, together with the dates of the sales, and the total amount so expended by the relief agency.

(3) The relief agency must prove to the satisfaction of the director that the person making the sales has included the amount thereof in the computation of the gross receipts of such person and that such person has paid the tax levied by this division, based upon such computation of gross receipts.

c. If satisfied that the foregoing conditions and requirements have been complied with, the director shall refund the amount claimed by the relief agency.

2. Construction contractors may make application to the department for a refund of the additional one percent tax paid under this division or the additional one percent tax paid under chapter 423 by

reason of the increase in the tax from four to five percent for taxes paid on goods, wares, or merchandise under the following conditions:

a. The goods, wares, or merchandise are incorporated into an improvement to real estate in fulfillment of a written contract fully executed prior to July 1, 1992. The refund shall not apply to equipment transferred in fulfillment of a mixed construction contract.

b. The contractor has paid to the department or to a retailer the full five percent tax.

c. The claim is filed on forms provided by the department and is filed within one year of the date the tax is paid.

A contractor who makes an erroneous application for refund shall be liable for payment of the excess refund paid plus interest at the rate in effect under section 421.7. In addition, a contractor who willfully makes a false application for refund is guilty of a simple misdemeanor and is liable for a penalty equal to fifty percent of the excess refund claimed. Excess refunds, penalties, and interest due under this subsection may be enforced and collected in the same manner as the tax imposed by this division.

3. a. The department shall issue or the seller may separately provide exemption certificates in the form prescribed by the director to assist retailers in properly accounting for nontaxable sales of tangible personal property or services to purchasers for purposes of resale or for processing, except fuel consumed in processing.

b. The sales tax liability for all sales of tangible personal property and all sales of services is upon the seller and the purchaser unless the seller takes in good faith from the purchaser a valid exemption certificate stating under penalties for perjury that the purchase is for resale or for processing and is not a retail sale as defined in section 422.42, subsection 14, or unless the seller takes a fuel exemption certificate pursuant to subsection 4. If the tangible personal property or services are purchased tax free pursuant to a valid exemption certificate which is taken in good faith by the seller, and the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the taxes directly to the department and sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58, and 422.59 shall apply to the purchaser.

c. A valid exemption certificate is an exemption certificate which is complete and correct according to the requirements of the director.

d. A valid exemption certificate is taken in good faith by the seller when the seller has exercised that caution and diligence which honest persons of ordinary prudence would exercise in handling their own business affairs, and includes an honesty of intention and freedom from knowledge of circumstances which ought to put one upon inquiry as to the facts. In order for a seller to take a valid exemption certificate in good faith, the seller must exercise reasonable prudence to determine the facts supporting the valid exemption certificate, and if any facts upon such

certificate would lead a reasonable person to further inquiry, then such inquiry must be made with an honest intent to discover the facts.

e. If the circumstances change and the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner, the purchaser is liable solely for the taxes and shall remit the taxes directly to the department in accordance with this subsection.

4. a. The department shall issue or the seller may separately provide fuel exemption certificates in the form prescribed by the director.

b. The seller may accept a completed fuel exemption certificate, as prepared by the purchaser, for five years unless the purchaser files a new completed exemption certificate. If the fuel is purchased tax free pursuant to a fuel exemption certificate which is taken by the seller, and the fuel is used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes, and shall remit the taxes directly to the department and sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58, and 422.59 shall apply to the purchaser.

c. The purchaser may apply to the department for its review of the fuel exemption certificate. In this event, the department shall review the fuel exemption certificate within twelve months from the date of application and determine the correct amount of the exemption. If the amount determined by the department is different than the amount that the purchaser claims is exempt, the department shall promptly notify the purchaser of the determination. Failure of the department to make a determination within twelve months from the date of application shall constitute a determination that the fuel exemption certificate is correct as submitted. A determination of exemption by the department is final unless the purchaser appeals to the director for a revision of the determination within thirty days after the postmark date of the notice of determination. The director shall grant a hearing, and upon the hearing the director shall determine the correct exemption and notify the purchaser of the decision by mail. The decision of the director is final unless the purchaser seeks judicial review of the director's decision under section 422.55 within thirty days after the postmark date of the notice of the director's decision. Unless there is a substantial change, the department shall not impose penalties pursuant to section 422.58, both retroactively to purchases made after the date of application and prospectively until the department gives notice to the purchaser that a tax or additional tax is due, for failure to remit any tax due which is in excess of a determination made under this section. A determination made by the department pursuant to this subsection does not constitute an audit for purposes of section 422.54.

d. If the circumstances change and the fuel is used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the taxes directly to the department in accordance with subsection 3.

e. The purchaser shall attach documentation to the fuel exemption certificate which is reasonably necessary to support the exemption for fuel consumed in processing. If the purchaser files a new exemption certificate with the seller, documentation shall not be required if the purchaser previously furnished the seller with this documentation and substantial change has not occurred since that documentation was furnished or if fuel consumed in processing is separately metered and billed by the seller.

f. In this section, "fuel" includes gas, electricity, water, heat, steam, and any other tangible personal property consumed in creating heat, power, or steam. In this section, "fuel consumed in processing" means fuel used or disposed of for processing including grain drying, for providing heat or cooling for livestock buildings or for greenhouses or buildings or parts of buildings dedicated to the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business, or for generating electric current, or in implements of husbandry engaged in agricultural production. In this subsection, "fuel exemption certificate" means an exemption certificate given by the purchaser under penalty of perjury to assist retailers in properly accounting for nontaxable sales of fuel consumed in processing. In this subsection, "substantial change" means a change in the use or disposition of tangible personal property and services by the purchaser such that the purchaser pays less than ninety percent of the purchaser's actual sales tax liability. A change includes a misstatement of facts in an application made pursuant to paragraph "c" or in a fuel exemption certificate.

95 Acts, ch 174, §4

Subsection 4, paragraph f amended

422.53 Permits required — applications — revocation.

1. It is unlawful for any person to engage in or transact business as a retailer within this state, unless a permit has been issued to the retailer under this section, except as provided in subsection 6. Every person desiring to engage in or conduct business as a retailer within this state shall file with the department an application for a permit. Every application for a permit shall be made upon a form prescribed by the director and shall set forth the name under which the applicant transacts or intends to transact business, the location of the applicant's place of business, and any other information as the director may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of the person's authority.

2. The applicant must have a permit for each place of business. The department may deny a permit to an applicant who is substantially delinquent in paying a tax due, or the interest or penalty on the tax, administered by the department at the time of ap-

plication. If the applicant is a partnership, a permit may be denied if the partner is substantially delinquent in paying any delinquent tax, penalty, or interest. If the applicant is a corporation, a permit may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest.

3. The department shall grant and issue to each applicant a permit for each place of business within the state. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated.

4. Permits issued under this division are valid and effective until revoked by the department.

5. If the holder of a permit fails to comply with any of the provisions of this division or any order or rule of the department adopted under this division or is substantially delinquent in the payment of a tax administered by the department or the interest or penalty on the tax, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the permit-holding corporation, or interest or penalty on the tax, administered by the department, the director may revoke the permit. The director shall send notice by mail to a permit holder informing that person of the director's intent to revoke the permit and of the permit holder's right to a hearing on the matter. If the permit holder petitions the director for a hearing on the proposed revocation, after giving ten days' notice of the time and place of the hearing in accordance with section 17A.18, subsection 3, the matter may be heard and a decision rendered. The director may restore permits after revocation. The director shall adopt rules setting forth the period of time a retailer must wait before a permit may be restored or a new permit may be issued. The waiting period shall not exceed ninety days from the date of the revocation of the permit.

6. Persons who are not regularly engaged in selling at retail and do not have a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at state, county, district or local fairs, carnivals and the like, shall report and remit the tax on a nonpermit basis, under rules the director shall provide for the efficient collection of the sales tax.

7. The provisions of subsection 1, dealing with lawful right of a retailer to transact business, according to the context, apply to persons having receipts from rendering, furnishing, or performing services enumerated in section 422.43, except that a person holding a permit pursuant to subsection 1 shall not be required to obtain any separate sales tax permit for the purpose of engaging in business involving the services.

95 Acts, ch 83, §8

Subsection 2 amended

422.55 Judicial review.

1. Judicial review of actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act.

2. For cause and upon a showing by the director that collection of the tax in dispute is in doubt, the court may order the petitioner to file with the clerk a bond for the use of the respondent, with sureties approved by the clerk, in the amount of tax appealed from, conditioned that the petitioner shall perform the orders of the court.

3. An appeal may be taken by the taxpayer or the director to the supreme court of this state irrespective of the amount involved.

95 Acts, ch 83, §9
Subsection 2 stricken and rewritten

422.60 Imposition of tax — credit.

1. A franchise tax according to and measured by net income is imposed on financial institutions for the privilege of doing business in this state as financial institutions.

2. In addition to all taxes imposed under this division, there is imposed upon each financial institution doing business within the state the greater of the tax determined in section 422.63 or the state alternative minimum tax equal to sixty percent of the maximum state franchise tax rate, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer computed under this subsection.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income as computed with the adjustments in section 422.61, subsection 3, and with the following adjustments:

a. Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1) and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4), (c)(1), (d), (f), and (g), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code.

b. Make the adjustments provided in section 56(c)(1) of the Internal Revenue Code, except that in making the calculation under sections 56(f)(1) and 56(g)(1) of the Internal Revenue Code the state alternative minimum taxable income, computed without regard to the adjustments made by this paragraph, the exemption provided for in paragraph "d", and the state alternative tax net operating loss described in paragraph "e", shall be substituted for the items described in sections 56(f)(1)(B) and 56(g)(1)(B) of the Internal Revenue Code.

c. Apply the allocation and apportionment provisions of section 422.63.

d. Subtract an exemption amount of forty thousand dollars. This exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this paragraph, exceeds one hundred fifty thousand dollars.

e. In the case of a net operating loss beginning after December 31, 1986 which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of items of tax preference and adjustments arising in the tax year which was taken into account in computing the net operating loss in section 422.35, subsection 11. The deduction for a net operating loss for a tax year beginning after December 31, 1986 which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

3. a. There is allowed as a credit against the tax determined in section 422.63 for a tax year an amount equal to the minimum tax credit for that tax year.

The minimum tax credit for a tax year is the excess, if any, of the adjusted net minimum tax imposed for all prior tax years beginning on or after January 1, 1987, over the amount allowable as a credit under this subsection for those prior tax years.

b. The allowable credit under paragraph "a" for a tax year shall not exceed the excess, if any, of the tax determined in section 422.63 over the state alternative minimum tax as determined in subsection 2.

The net minimum tax for a tax year is the excess, if any, of the tax determined in subsection 2 for the tax year over the tax determined in section 422.63 for the tax year.

The adjusted net minimum tax for a tax year is the net minimum tax for the tax year reduced by the amount which would be the net minimum tax if the only item of tax preference taken into account was that described in paragraph (6) of section 57(a) of the Internal Revenue Code.

Section not amended
Reference in subsection 2, unnumbered paragraph 2, to renumbered subsection editorially corrected

422.61 Definitions.

In this division, unless the context otherwise requires:

1. "Financial institution" means a state bank as defined in section 524.103, subsection 33, a state bank chartered under the laws of any other state, a national banking association, a trust company, a federally chartered savings and loan association, an out-of-state state chartered savings bank, a financial institution chartered by the federal home loan bank board, a non-Iowa chartered savings and loan association, an association incorporated or authorized to do business under chapter 534, or a production credit association.

2. "Investment subsidiary" means an affiliate that is owned, capitalized, or utilized by a financial institution with one of its purposes being to make, hold, or manage, for and on behalf of the financial institution, investments in securities which the financial institution would be permitted by applicable law to make for its own account.

3. "Net income" means the net income of the financial institution computed in accordance with section 422.35, with the following adjustments:

a. Federal income taxes paid or accrued shall not be subtracted.

b. Notwithstanding sections 262.41 and 262.51, or any other provisions of law, income from obligations of the state and its political subdivisions and franchise taxes paid or accrued under this division during the taxable year shall be added.

c. Interest and dividends from federal securities shall not be subtracted.

d. Interest and dividends derived from obligations of United States possessions, agencies, and instrumentalities, including bonds which were purchased after January 1, 1991, and issued by the governments of Puerto Rico, Guam, and the Virgin Islands shall be added, to the extent they were not included in computing federal taxable income.

e. A deduction disallowed under section 265(b) or section 291(e)(1)(B) of the Internal Revenue Code shall be subtracted.

f. A deduction shall not be allowed for that portion of the taxpayer's expenses computed under this paragraph which is allocable to an investment in an investment subsidiary. The portion of the taxpayer's expenses which is allocable to an investment in an investment subsidiary is an amount which bears the same ratio to the taxpayer's expenses as the taxpayer's average adjusted basis, as computed pursuant to section 1016 of the Internal Revenue Code, of investment in that investment subsidiary bears to the average adjusted basis for all assets of the taxpayer. The portion of the taxpayer's expenses that is computed and disallowed under this paragraph shall be added.

4. "Taxable year" means the calendar year or the fiscal year ending during a calendar year, for which the tax is payable. "Fiscal year" includes a tax period of less than twelve months if, under the Internal Revenue Code, a corporation is required to file a tax return covering a tax period of less than twelve months.

5. "Taxpayer" means a financial institution subject to any tax imposed by this division.

95 Acts, ch 193, §1, 2

Subsection 2 and subsection 3, paragraph f, apply retroactively to January 1, 1995, for tax years beginning on or after that date, to financial institutions with investments in investment subsidiaries on or after July 1, 1995; 95 Acts, ch 193, §3

NEW subsection 2 and former subsections 2-4 renumbered as 3-5
Subsection 3, NEW paragraph f

422.70 General powers — hearings.

1. The director, for the purpose of ascertaining the correctness of a return or for the purpose of making an estimate of the taxable income or receipts of a taxpayer, has power: To examine or cause to be examined by an agent or representative designated by the director, books, papers, records, or memoranda; to require by subpoena the attendance and testimony of witnesses; to issue and sign subpoenas; to administer oaths, to examine witnesses and receive evidence; to compel witnesses to produce for examination books, papers, records, and documents relating to any matter which the director has the authority to investigate or determine.

2. Where the director finds the taxpayer has made a fraudulent return, the costs of any hearing, including a contested case hearing, shall be taxed to the taxpayer. In all other cases the costs shall be paid by the state.

3. The fees and mileage to be paid witnesses and charged as costs shall be the same as prescribed by law in proceedings in the district court of this state in civil cases. All costs shall be charged in the manner provided by law in proceedings in civil cases. If the costs are charged to the taxpayer they shall be added to the taxes assessed against the taxpayer and shall be collected in the same manner. Costs charged to the state shall be certified by the director who shall issue warrants on the state treasurer for the amount of the costs, to be paid out of the proceeds of the taxes collected under this chapter.

4. In case of disobedience to a subpoena the director may invoke the aid of any court of competent jurisdiction in requiring the attendance and testimony of witnesses and production of records, books, papers, and documents, and such court may issue an order requiring the person to appear before the director and give evidence or produce records, books, papers, and documents, as the case may be, and any failure to obey such order of court may be punished by the court as a contempt thereof.

5. Testimony on hearings before the director may be taken by a deposition as in civil cases, and any person may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify as hereinbefore provided.

95 Acts, ch 83, §10

Subsection 2 amended

422.88 Failure to pay estimated tax.

1. If the taxpayer submits an underpayment of the estimated tax, the taxpayer is subject to an underpayment penalty at the rate established under section 421.7 upon the amount of the underpayment for the period of the underpayment.

2. The amount of the underpayment shall be the excess of the amount of the installment which would be required to be paid if the estimated tax was equal to ninety percent of the tax shown on the return of the taxpayer for the taxable year over the amount of installments paid on or before the date prescribed for payment.

3. If the taxpayer did not file a return during the taxable year, the amount of the underpayment shall be equal to ninety percent of the taxpayer's tax liability for the taxable year over the amount of installments paid on or before the date prescribed for payment.

4. The period of the underpayment shall run from the date the installment was required to be paid to the last day of the fourth month following the close of the taxable year or the date on which such portion is paid, whichever date first occurs.

5. A payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment ex-

ceeds the amount of the installment determined under subsection 2 or 3 of this section for such installment date.

95 Acts, ch 83, §11
1995 amendments to subsections 2 and 3 are effective July 1, 1995, for tax years beginning on or after that date; 95 Acts, ch 83, §36
Subsections 2 and 3 amended

422.89 Exception to penalty.

The penalty for underpayment of any installment of estimated tax imposed under section 422.88 shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax amount at least to one of the following:

1. The tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months.

2. An amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding taxable year.

3. An amount equal to ninety percent of the tax for the taxable year computed by placing on an annualized basis the taxable income:

a. For the first three months of the taxable year if an installment is required to be paid in the fourth month;

b. For the first three months or for the first five months of the taxable year if an installment is required to be paid in the sixth month;

c. For the first six months or for the first eight months of the taxable year if an installment is required to be paid in the ninth month; and

d. For the first nine months or for the first eleven months of the taxable year if an installment is required to be paid in the twelfth month of the taxable year.

The taxable income shall be placed on an annualized basis by multiplying the taxable income as determined under this subsection by twelve and dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine, or eleven months, as the case may be) referred to in this subsection.

95 Acts, ch 83, §12
1995 amendment to subsection 3, unnumbered paragraph 1, is effective July 1, 1995, for tax years beginning on or after that date; 95 Acts, ch 83, §36

Subsection 3, unnumbered paragraph 1 amended

422.110 Income tax credit in lieu of refund.

In lieu of the fuel tax refund provided in sections 452A.17 to 452A.19, a person or corporation subject

to taxation under divisions II or III of this chapter, except persons or corporations licensed under section 452A.4, may elect to receive an income tax credit for tax years beginning on or after January 1, 1975. The person or corporation which elects to receive an income tax credit shall cancel its refund permit obtained under section 452A.18 within thirty days after the first day of its tax year or the permit becomes invalid at that time. For the purposes of this section, "person" includes a person claiming a tax credit based upon the person's pro rata share of the earnings from a partnership or corporation which is not subject to a tax under division II or III of this chapter as a partnership or corporation. If the election to receive an income tax credit has been made, it remains effective for at least one tax year, and for subsequent tax years unless a change is requested and a new refund permit applied for within thirty days after the first day of the person's or corporation's tax year. The income tax credit shall be the amount of the Iowa fuel tax paid on fuel purchased by the person or corporation and used as follows:

1. Motor fuel as defined in section 452A.2, subsection 17, used for the purpose of operating or propelling farm tractors, corn shellers, roller mills, truck-mounted feed grinders, stationary engines, for producing denatured alcohol within the state, for cleaning or dyeing, or for any purpose other than in watercraft or aircraft or in motor vehicles operated or intended to be operated upon the public highways.

2. Special fuel, as defined in section 452A.2, used for the purpose of operation of corn shellers, roller mills, and feed grinders mounted on trucks.

3. Motor fuel placed in motor vehicles and used, other than on public highways, in the extraction and processing of natural deposits.

4. Motor fuel or special fuel used by a bona fide commercial fisher, licensed and operating under an owner's certificate for commercial fishing gear issued pursuant to section 482.4.

However, no credit shall be given with respect to motor fuel taken out of the state in fuel supply tanks of motor vehicles, motor fuel used in aircraft or watercraft, or motor fuel used in the performance of a contract which is paid out of state funds unless the contract for the work contains a certificate made under penalty for false certificate that the estimate, bid or price to be paid for the work includes no amount representing motor fuel tax subject to a credit. The right to a credit under this section is not assignable and the credit may be claimed only by the person or corporation that purchased the fuel.

95 Acts, ch 155, §6, 7
1995 amendments to unnumbered paragraph 1 and subsection 2 effective January 1, 1996; 95 Acts, ch 155, §44
Unnumbered paragraph 1 amended
Subsection 2 amended

CHAPTER 422A

HOTEL AND MOTEL TAX

422A.2 Local transient guest tax fund.

1. There is created in the department of revenue and finance a local transient guest tax fund which shall consist of all moneys credited to such fund under section 422A.1.

2. All moneys in the local transient guest tax fund shall be remitted at least quarterly by the department of revenue and finance, pursuant to rules of the director of revenue and finance, to each city in the amount collected from businesses in that city and to each county in the amount collected from businesses in the unincorporated areas of the county.

3. Moneys received by the city from this fund shall be credited to the general fund of the city, subject to the provisions of subsection 4.

4. The revenue derived from any hotel and motel tax authorized by this chapter shall be used as follows:

a. Each county or city which levies the tax shall spend at least fifty percent of the revenues derived therefrom for the acquisition of sites for, or constructing, improving, enlarging, equipping, repairing, operating, or maintaining of recreation, convention, cultural, or entertainment facilities including but not limited to memorial buildings, halls and monuments, civic center convention buildings, auditoriums, coliseums, and parking areas or facilities located at those recreation, convention, cultural, or entertainment facilities or the payment of principal and interest, when due, on bonds or other evidence of indebtedness issued by the county or city for those recreation, convention, cultural, or entertainment facilities; or for the promotion and encouragement of tourist and convention business in the city or county and surrounding areas.

b. The remaining revenues may be spent by the city or county which levies the tax for any city or county operations authorized by law as a proper purpose for the expenditure within statutory limitations of city or county revenues derived from ad valorem taxes.

c. Any city or county which levies and collects the hotel and motel tax authorized by this chapter may pledge irrevocably an amount of the revenues derived therefrom for each of the years the bonds remain outstanding to the payment of bonds which the city or county may issue for one or more of the purposes set forth in paragraph "a" of this subsection. Any revenue pledged to the payment of such bonds may be credited to the spending requirement of paragraph "a" of this subsection.

d. The provisions of division III of chapter 384 relating to the issuance of corporate purpose bonds apply to the issuance by a city of bonds payable as provided in this section and the provisions of chapter 331, division IV, part 3, relating to the issuance of county purpose bonds apply to the issuance by a county of bonds payable as provided in this section.

The provisions of chapter 76 apply to the bonds payable as provided in this section except that the mandatory levy to be assessed pursuant to section 76.2 shall be at a rate to generate an amount which together with the receipts from the pledged portion of the hotel and motel tax is sufficient to pay the interest and principal on the bonds. All amounts collected as a result of the levy assessed pursuant to section 76.2 and paid out in the first instance for bond principal and interest shall be repaid to the city or county which levied the tax from the first available hotel and motel tax collections received in excess of the requirement for the payment of the principal and interest of the bonds and when repaid shall be applied in reduction of property taxes.

The amount of bonds which may be issued under section 76.3 shall be the amount which could be retired from the actual collections of the hotel and motel tax for the last four calendar quarters, as certified by the director of revenue and finance. The amount of tax revenues pledged jointly by other cities or counties may be considered for the purpose of determining the amount of bonds which may be issued. If the hotel and motel tax has been in effect for less than four calendar quarters, the tax collected within the shorter period may be adjusted to project the collections for the full year for the purpose of determining the amount of the bonds which may be issued.

e. A city or county, jointly with one or more other cities or counties as provided in chapter 28E, may pledge irrevocably any amount derived from the revenues of the hotel and motel tax to the support or payment of bonds issued for a project within the purposes set forth in paragraph "a" of this subsection and located within one or more of the participatory cities or counties or may apply the proceeds of its bonds to the support of any such project. Revenue so pledged or applied shall be credited to the spending requirement of paragraph "a" of this subsection.

f. A city or county acting on behalf of an unincorporated area may, in lieu of calling an election, institute proceedings for the issuance of bonds under this section by causing a notice of the proposal to issue the bonds, including a statement of the amount and purpose of the bonds, together with the maximum rate of interest which the bonds are to bear, and the right to petition for an election, to be published at least once in a newspaper of general circulation within the city or unincorporated area at least ten days prior to the meeting at which it is proposed to take action for the issuance of the bonds.

If at any time before the date fixed for taking action for the issuance of the bonds, a petition signed by three percent of the registered voters of the city or unincorporated area, asking that the question of issuing the bonds be submitted to the registered voters of the city or unincorporated area, the council

or board of supervisors acting on behalf of an unincorporated area shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds.

The proposition of issuing bonds under this section is not approved unless the vote in favor of the proposition is equal to a majority of the vote cast.

If no petition is filed, or if a petition is filed and the

proposition of issuing the bonds is approved at an election, the council or board of supervisors acting on behalf of an unincorporated area may proceed with the authorization and issuance of the bonds.

Bonds may be issued for the purpose of refunding outstanding and previously issued bonds under this subsection without otherwise complying with this paragraph.

95 Acts, ch 67, §53

Terminology change applied

CHAPTER 422B

LOCAL OPTION TAXES

422B.1 Authorization — election — imposition and repeal.

1. A county may impose by ordinance of the board of supervisors local option taxes authorized by this chapter, subject to this section and subject to the exception provided in subsection 2.

2. *a.* A city whose corporate boundaries include areas of two counties may impose by ordinance of its city council a local sales and services tax if all of the following apply:

(1) All the residents of the city live in one county.

(2) The county in which the city residents reside has held an election on the question of the imposition of a local sales and services tax and a majority of those voting on the question in the city favored its imposition.

(3) The city has entered into an agreement on the distribution of the sales and services tax revenues collected from the area where the city tax is imposed with the county where such area is located.

b. The city council of a city authorized to impose a local sales and services tax pursuant to paragraph "a" shall only do so subject to all of the following restrictions:

(1) The tax shall only be imposed in the area of the city located in the county where none of its residents reside.

(2) The tax shall be at the same rate and become effective at the same time as the county tax imposed in the other area of the city.

(3) The tax once imposed shall continue to be imposed until the county-imposed tax is reduced or increased in rate or repealed, and then the city-imposed tax shall also be reduced or increased in rate or repealed in the same amount and be effective on the same date.

(4) The tax shall be imposed on the same basis as provided in section 422B.8 and notification requirements in section 422B.9 apply.

(5) The city shall assist the department of revenue and finance to identify the businesses in the area which are to collect the city-imposed tax. The process shall be ongoing as long as the city tax is imposed.

c. The agreement on the distribution of the revenues collected from the city-imposed tax shall provide that fifty percent of such revenues shall be remitted to the county in which the part of the city where the city tax is imposed is located.

d. The latest certified federal census preceding the election held by the county on the question of imposition of the local sales and services tax shall be used in determining if the city qualifies under paragraph "a", subparagraph (1), to impose its own tax and in determining the area where the city tax may be imposed under paragraph "b", subparagraph (1).

e. A city is not authorized to impose a local sales and services tax under this subsection after January 1, 1998. A city that has imposed a local sales and services tax under this subsection on or before January 1, 1998, may continue to collect the tax until such time as the tax is repealed by the city and the fact that that area acquires residents after the tax is imposed shall not affect the imposition or collection of the tax.

3. A local option tax shall be imposed only after an election at which a majority of those voting on the question favors imposition and shall then be imposed until repealed as provided in subsection 6, paragraph "a". If the tax is a local vehicle tax imposed by a county, it shall apply to all incorporated and unincorporated areas of the county. If the tax is a local sales and services tax imposed by a county, it shall only apply to those incorporated areas and the unincorporated area of that county in which a majority of those voting in the area on the tax favors its imposition. For purposes of the local sales and services tax, all cities contiguous to each other shall be treated as part of one incorporated area and the tax would be imposed in each of those contiguous cities only if the majority of those voting in the total area covered by the contiguous cities favors its imposition. For purposes of the local sales and services tax, a city is not contiguous to another city if the only road access between the two cities is through another state.

4. *a.* A county board of supervisors shall direct within thirty days the county commissioner of elec-

tions to submit the question of imposition of a local vehicle tax or a local sales and services tax to the registered voters of the incorporated and unincorporated areas of the county upon receipt of a petition, requesting imposition of a local vehicle tax or a local sales and services tax, signed by eligible electors of the whole county equal in number to five percent of the persons in the whole county who voted at the last preceding state general election. In the case of a local vehicle tax, the petition requesting imposition shall specify the rate of tax and the classes, if any, that are to be exempt. If more than one valid petition is received, the earliest received petition shall be used.

b. The question of the imposition of a local sales and services tax shall be submitted to the registered voters of the incorporated and unincorporated areas of the county upon receipt by the county commissioner of elections of the motion or motions, requesting such submission, adopted by the governing body or bodies of the city or cities located within the county or of the county, for the unincorporated areas of the county, representing at least one half of the population of the county. Upon adoption of such motion, the governing body of the city or county, for the unincorporated areas, shall submit the motion to the county commissioner of elections and in the case of the governing body of the city shall notify the board of supervisors of the adoption of the motion. The county commissioner of elections shall keep a file on all the motions received and, upon reaching the population requirements, shall publish notice of the ballot proposition concerning the imposition of the local sales and services tax. A motion ceases to be valid at the time of the holding of the regular election for the election of members of the governing body which adopted the motion. The county commissioner of elections shall eliminate from the file any motion that ceases to be valid. The manner provided under this paragraph for the submission of the question of imposition of a local sales and services tax is an alternative to the manner provided in paragraph "a".

5. The county commissioner of elections shall submit the question of imposition of a local option tax at a state general election or at a special election held at any time other than the time of a city regular election. The election shall not be held sooner than sixty days after publication of notice of the ballot proposition. The ballot proposition shall specify the type and rate of tax and in the case of a vehicle tax the classes that will be exempt and in the case of a local sales and services tax the date it will be imposed. The ballot proposition shall also specify the approximate amount of local option tax revenues that will be used for property tax relief and shall contain a statement as to the specific purpose or purposes for which the revenues shall otherwise be expended. If the county board of supervisors decides under subsection 6 to specify a date on which the local option sales and services tax shall automatically be repealed, the date of the repeal shall also be specified on the ballot. The rate of the vehicle tax shall be in increments of one dollar per vehicle as set by the

petition seeking to impose the tax. The rate of a local sales and services tax shall not be more than one percent as set by the governing body. The state commissioner of elections shall establish by rule the form for the ballot proposition which form shall be uniform throughout the state.

6. a. If a majority of those voting on the question of imposition of a local option tax favor imposition of a local option tax, the governing body of that county shall impose the tax at the rate specified for an unlimited period. However, in the case of a local sales and services tax, the county shall not impose the tax in any incorporated area or the unincorporated area if the majority of those voting on the tax in that area did not favor its imposition. For purposes of the local sales and services tax, all cities contiguous to each other shall be treated as part of one incorporated area and the tax shall be imposed in each of those contiguous cities only if the majority of those voting on the tax in the total area covered by the contiguous cities favored its imposition. The local option tax may be repealed or the rate increased or decreased or the use thereof changed after an election at which a majority of those voting on the question of repeal or rate or use change favored the repeal or rate or use change. The election at which the question of repeal or rate or use change is offered shall be called and held in the same manner and under the same conditions as provided in subsections 4 and 5 for the election on the imposition of the local option tax. However, in the case of a local sales and services tax where the tax has not been imposed countywide, the question of repeal or imposition or rate or use change shall be voted on only by the registered voters of the areas of the county where the tax has been imposed or has not been imposed, as appropriate. However, the governing body of the incorporated area or unincorporated area where the local sales and services tax is imposed may, upon its own motion, request the county commissioner of elections to hold an election in the incorporated or unincorporated area, as appropriate, on the question of the change in use of local sales and services tax revenues. The election may be held at any time but not sooner than sixty days following publication of the ballot proposition. If a majority of those voting in the incorporated or unincorporated area on the change in use favor the change, the governing body of that area shall change the use to which the revenues shall be used. The ballot proposition shall list the present use of the revenues, the proposed use, and the date after which revenues received will be used for the new use.

When submitting the question of the imposition of a local sales and services tax, the county board of supervisors may direct that the question contain a provision for the repeal, without election, of the local sales and services tax on a specific date, which date shall be the end of a calendar quarter.

b. Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, or change in the rate of a local option tax, the governing body shall give written

notice to the director of revenue and finance or, in the case of a local vehicle tax, to the director of the department of transportation, of the result of the election.

7. More than one of the authorized local option taxes may be submitted at a single election and the different taxes shall be separately implemented as provided in this section.

Costs of local option tax elections shall be apportioned among jurisdictions within the county voting on the question at the same election on a pro rata basis in proportion to the number of registered voters in each taxing jurisdiction and the total number of registered voters in all of the taxing jurisdictions.

8. Local option taxes authorized to be imposed as provided in this chapter are a local sales and services tax and a local vehicle tax. The rate of the tax shall be in increments of one dollar per vehicle for a vehicle tax as set on the petition seeking to impose the vehicle tax. The rate of a local sales and services tax shall not be more than one percent as set by the governing body.

9. In a county that has imposed a local option sales and services tax, the board of supervisors shall, notwithstanding any contrary provision of this chapter, repeal the local option sales and services tax in the unincorporated areas or in an incorporated city area in which the tax has been imposed upon adoption of its own motion for repeal in the unincorporated areas or upon receipt of a motion adopted by the governing body of that incorporated city area requesting repeal. The board of supervisors shall repeal the local option sales and services tax effective at the end of the calendar quarter during which it adopted the repeal motion or the motion for the repeal was received. For purposes of this subsection, incorporated city area includes an incorporated city which is contiguous to another incorporated city.

10. Notwithstanding subsection 9 or any other contrary provision of this chapter, a local option sales and services tax shall not be repealed or reduced in rate if obligations are outstanding which are payable as provided in section 422B.12, unless funds sufficient to pay the principal, interest, and premium, if any, on the outstanding obligations at and prior to maturity have been properly set aside and pledged for that purpose.

95 Acts, ch 67, §53; 95 Acts, ch 186, §1-4
1995 amendments by 95 Acts, ch 186, §1-4, are retroactively applicable to local option sales and services taxes approved on or after July 1, 1994; special procedural provisions; 95 Acts, ch 186, §9

See Code editor's note to §13B.8
Subsection 1 amended
NEW subsections 2 and 10 and former subsections 2-8 renumbered as 3-9

Subsection 6, paragraph a, unnumbered paragraph 1 amended
Terminology change applied

422B.8 Local sales and services tax.

A local sales and services tax at the rate of not more than one percent may be imposed by a county on the gross receipts taxed by the state under chapter 422, division IV. A local sales and services tax shall be imposed on the same basis as the state sales and services tax and may not be imposed on the sale of

any property or on any service not taxed by the state, except the tax shall not be imposed on the gross receipts from the sale of motor fuel or special fuel as defined in chapter 452A, on the gross receipts from the rental of rooms, apartments, or sleeping quarters which are taxed under chapter 422A during the period the hotel and motel tax is imposed, on the gross receipts from the sale of natural gas or electric energy in a city or county where the gross receipts are subject to a franchise fee or user fee during the period the franchise or user fee is imposed, on the gross receipts from the sale of equipment by the state department of transportation, and on the gross receipts from the sale of a lottery ticket or share in a lottery game conducted pursuant to chapter 99E. A local sales and services tax is applicable to transactions within those incorporated and unincorporated areas of the county where it is imposed and shall be collected by all persons required to collect state gross receipts taxes. All cities contiguous to each other shall be treated as part of one incorporated area and the tax would be imposed in each of those contiguous cities only if the majority of those voting in the total area covered by the contiguous cities favor its imposition.

The amount of the sale, for purposes of determining the amount of the local sales and services tax, does not include the amount of any state gross receipts taxes.

A tax permit other than the state tax permit required under section 422.53 shall not be required by local authorities.

95 Acts, ch 83, §13
Unnumbered paragraph 1 amended

422B.10 Payment to local governments.

1. The director shall credit the local sales and services tax receipts and interest and penalties from a county-imposed tax to the county's account in the local sales and services tax fund and from a city-imposed tax under section 422B.1, subsection 2, to the city's account in the local sales and services tax fund. If the director is unable to determine from which county any of the receipts were collected, those receipts shall be allocated among the possible counties based on allocation rules adopted by the director.

2. a. The director of revenue and finance within fifteen days of the beginning of each fiscal year shall send to each city or county where the local option tax is imposed, an estimate of the amount of tax moneys each city or county will receive for the year and for each quarter of the year. At the end of each quarter, the director may revise the estimates for the year and remaining quarters.

b. The director of revenue and finance shall remit ninety percent of the estimate tax receipts for the city or county to the city or county after the end of each quarter no later than the following dates: November 10, February 10, May 10, and August 10.

c. The director of revenue and finance shall remit a final payment of the remainder of tax moneys due the city or county for the fiscal year before the due date for the payment of the first quarter of the next

fiscal year. If an overpayment has resulted during the previous fiscal year, the first payment of the new fiscal year shall be adjusted to reflect any overpayment.

3. Seventy-five percent of each county's account shall be remitted on the basis of the county's population residing in the unincorporated area where the tax was imposed and those incorporated areas where the tax was imposed as follows:

a. To the board of supervisors a pro rata share based upon the percentage of the above population of the county residing in the unincorporated area of the county where the tax was imposed according to the most recent certified federal census.

b. To each city in the county where the tax was imposed a pro rata share based upon the percentage of the city's population residing in the county to the above population of the county according to the most recent certified federal census.

4. Twenty-five percent of each county's account shall be remitted based on the sum of property tax dollars levied by the board of supervisors if the tax was imposed in the unincorporated areas and each city in the county where the tax was imposed during the three-year period beginning July 1, 1982 and ending June 30, 1985 as follows:

a. To the board of supervisors a pro rata share based upon the percentage of the total property tax dollars levied by the board of supervisors during the above three-year period.

b. To each city council where the tax was imposed a pro rata share based upon the percentage of property tax dollars levied by the city during the above three-year period of the above total property tax dollars levied by the board of supervisors and each city where the tax was imposed during the above three-year period.

5. From each city's account, the percent of revenues agreed to be distributed to the county in the agreement entered into as provided in section 422B.1, subsection 2, paragraph "a", subparagraph (3), and paragraph "c", shall be deposited into the appropriate county's account to be remitted as provided in subsections 3 and 4. The remaining revenues in the city's account shall be remitted to the city council. If a county does not have an account, its percent of the revenues shall be remitted directly to the county board of supervisors.

6. Local sales and services tax moneys received by a city or county may be expended for any lawful purpose of the city or county.

95 Acts, ch 186, §5, 6
 1995 amendments to subsection 1 and subsection 5 are retroactively applicable to local option sales and services taxes approved on or after July 1, 1994; special procedural provisions: 95 Acts, ch 186, §9
 Subsection 1 amended
 NEW subsection 5 and former subsection 5 renumbered as 6

b. "Designated portion" means the portion of the local option sales and services tax revenues which is authorized to be expended for one or a combination of purposes under an adopted public measure.

c. "Secondary recipient" means a political subdivision of the state which is to receive revenues from a local option sales and services tax over a period of years pursuant to the terms of a chapter 28E agreement with one or more cities or counties.

2. An issuer of public bonds which is a recipient of revenues from a local option sales and services tax imposed pursuant to this chapter may issue bonds in anticipation of the collection of one or more designated portions of the local option sales and services tax and may pledge irrevocably an amount of the revenue derived from the designated portions for each of the years the bonds remain outstanding to the payment of the bonds. Bonds may be issued only for one or more of the purposes set forth on the ballot proposition concerning the imposition of the local option sales and services tax, except bonds shall not be issued which are payable from that portion of tax revenues designated for property tax relief. The bonds may be issued in accordance with the procedures set forth in either subsection 3 or 4.

3. The governing body of an issuer may authorize the issuance of bonds which are payable from the designated portion of the revenues of the local option sales and services tax, and not from property tax, by following the authorization procedures set forth for cities in section 384.83. Bonds may be issued for the purpose of refunding outstanding and previously issued bonds under this subsection without otherwise complying with the provisions of this subsection.

4. To authorize the issuance of bonds payable as provided in this subsection, the governing body of an issuer shall comply with all of the procedures as follows:

a. A bond issuer may institute proceedings for the issuance of bonds by causing a notice of the proposal to issue the bonds, including a statement of the amount and purpose of the bonds, together with the maximum rate of interest which the bonds are to bear, and the right to petition for an election, to be published at least once in a newspaper of general circulation within the political subdivision or unincorporated area at least ten days prior to the meeting at which it is proposed to take action for the issuance of the bonds.

If at any time before the date fixed for taking action for the issuance of the bonds, a petition signed by three percent of the registered voters of the bond issuer is filed, asking that the question of issuing the bonds be submitted to the registered voters, the governing body shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds. The proposition of issuing bonds under this subsection is not approved unless the vote in favor of the proposition is equal to at least sixty percent of the vote cast. If a petition is not filed, or if a petition is

422B.12 Issuance of bonds.

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

a. "Bond issuer" or "issuer" means a city, a county, or a secondary recipient.

filed and the proposition of issuing the bonds is approved at an election, the governing body acting on behalf of the issuer may proceed with the authorization and issuance of the bonds. Bonds may be issued for the purpose of refunding outstanding and previously issued bonds under this subsection without otherwise complying with the provisions of this subsection.

b. The provisions of chapter 76 apply to the bonds payable as provided in this subsection, except that the mandatory levy to be assessed pursuant to section 76.2 shall be at a rate to generate an amount which together with the receipts from the pledged designated portion of the local option sales and services tax is sufficient to pay the interest and principal on the bonds. All amounts collected as a result of the levy assessed pursuant to section 76.2 and paid out in the first instance for bond principal and interest shall be repaid to the bond issuer which levied the tax from the first available designated portion of local option sales and services tax collections received in excess of the requirement for the payment of the principal and interest of the bonds and when repaid shall be applied in reduction of property taxes. The amount of bonds which may be issued under section 76.3 shall be the amount which could be retired from the actual collections of the designated portions of the local option sales and services tax for the last four calendar quarters, as certified by the director of revenue and finance. The amount of tax revenues pledged jointly by other cities or counties may be considered for the purpose of determining the amount of bonds which may be issued. If the local option sales and services tax has been in effect for less than four calendar quarters, the tax collected within the shorter period may be adjusted to project the collections of the designated portion for the full year for the purpose of determining the amount of the bonds which may be issued. The provisions of this section constitute separate authorization for the issuance of bonds and shall prevail in the event of conflict with any other provision of the Code limiting

the amount of bonds which may be issued or the source of payment of the bonds. Bonds issued under this section shall not limit or restrict the authority of the bond issuer to issue bonds under other provisions of the Code.

5. A city or county, jointly with one or more other political subdivisions as provided in chapter 28E, may pledge irrevocably any amount derived from the designated portions of the revenues of the local option sales and services tax to the support or payment of bonds of an issuer, issued for one or more purposes set forth on the ballot proposition concerning the imposition of the local option sales and services tax or a political subdivision may apply the proceeds of its bonds to the support of any such purpose.

6. Bonds issued pursuant to this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued pursuant to this section are declared to be issued for an essential public and governmental purpose. Bonds issued pursuant to this section shall be authorized by resolution of the governing body and may be issued in one or more series and shall bear the date or dates, be payable on demand or mature at the time or times, bear interest at the rate or rates not exceeding that permitted by chapter 74A, be in the denomination or denominations, be in the form, have the rank or priority, be executed in the manner, be payable in the medium of payment, at the place or places, be subject to the terms of redemption, with or without premium, be secured in the manner, and have the other characteristics, as may be provided by the resolution authorizing their issuance. The bonds may be sold at public or private sale at a price as may be determined by the governing body.

95 Acts, ch 186, §7

Section is retroactively applicable to local option sales and services taxes approved on or after July 1, 1994; special procedural provisions; 95 Acts, ch 186, §9

NEW section

CHAPTER 423

USE TAX

423.1 Definitions.

The following words, terms, and phrases when used in this chapter shall have the meanings ascribed to them in this section:

1. "Certificate of title" means a certificate of title issued for a vehicle under chapter 321.
2. "Department" and "director" shall have the same meaning as defined in section 422.3.
3. "Mobile home" means mobile home as defined in section 321.1, subsection 39, paragraph "a".

4. "Person" and "taxpayer" shall have the same meaning as defined in section 422.42.

5. "Purchase" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

6. "Purchase price" means the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise; provided:

- a. That cash discounts taken on sales are not included. A cash rebate which is provided by a motor

vehicle manufacturer to the purchaser of a vehicle subject to registration shall not be included so long as the rebate is applied to the purchase price of the vehicle.

b. That in transactions, except those subject to paragraph "c", in which tangible personal property is traded toward the purchase price of other tangible personal property the purchase price is only that portion of the purchase price which is payable in money to the retailer if the following conditions are met:

(1) The tangible personal property traded to the retailer is the type of property normally sold in the regular course of the retailer's business.

(2) The tangible personal property traded to the retailer is intended by the retailer to be ultimately sold at retail or is intended to be used by the retailer or another in the remanufacturing of a like item.

c. That in transactions between persons, neither of which is a retailer of vehicles subject to registration, in which a vehicle subject to registration is traded toward the purchase price of another vehicle subject to registration, the purchase price is only that portion of the purchase price represented by the difference between the total purchase price of the vehicle subject to registration acquired and the amount of the vehicle subject to registration traded.

7. "Retailer" means and includes every person engaged in the business of selling tangible personal property or services enumerated in section 422.43 for use within the meaning of this chapter. However, when in the opinion of the director it is necessary for the efficient administration of this chapter to regard any salespersons, representatives, truckers, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of those dealers, distributors, supervisors, employers, or persons, the director may regard them and the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this chapter.

8. "Retailer maintaining a place of business in this state" or any like term includes any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within this state pursuant to chapter 490.

9. "Street railways" shall mean and include urban transportation systems.

10. "Tangible personal property" means tangible goods, wares, merchandise, optional service or warranty contracts, except residential service contracts regulated under chapter 523C, vulcanizing, recapping, or retreading services, engraving, photography, retouching, printing, or binding services, and gas,

electricity, and water when furnished or delivered to consumers or users within this state.

11. "Trailer" shall mean every trailer, as is now or may be hereafter so defined by the motor vehicle law of this state, which is required to be registered or is subject only to the issuance of a certificate of title under such motor vehicle law.

12. "Use" means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it shall not include processing, or the sale of that property in the regular course of business. Property used in "processing" within the meaning of this subsection shall mean and include (a) any tangible personal property including containers which it is intended shall, by means of fabrication, compounding, manufacturing, or germination, become an integral part of other tangible personal property intended to be sold ultimately at retail, and containers used in the collection, recovery or return of empty beverage containers subject to chapter 455C, or (b) fuel which is consumed in creating power, heat, or steam for processing or for generating electric current, or (c) chemicals, solvents, sorbents, or reagents, which are directly used and are consumed, dissipated, or depleted in processing personal property, which is intended to be sold ultimately at retail, and which may not become a component or integral part of the finished product. The distribution to the public of free newspapers or shoppers guides shall be deemed a retail sale for purposes of the processing exemption.

13. "Vehicles subject to registration" means any vehicle subject to registration pursuant to section 321.18.

14. Definitions contained in section 422.42 shall apply to this chapter according to their context. The use in this state of building materials, supplies, or equipment, the sale or use of which is not treated as a retail sale or a sale at retail under section 422.42, subsections 15 and 16, shall not be subject to tax under this chapter.

95 Acts, ch 83, §14; 95 Acts, ch 187, §2
Subsections 7 and 10 amended

423.18 Offenses — penalties — limitations.

1. In addition to the tax or additional tax, the taxpayer shall pay a penalty as provided in section 421.27. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7, for each month counting each fraction of a month as an entire month, computed from the date the monthly deposit form or return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be collected in the same manner as the tax imposed by this chapter.

2. A person who willfully attempts in any manner to evade a tax imposed by this chapter or the payment of the tax, or a person who makes or causes to be made any false or fraudulent monthly deposit form or

return with intent to evade the tax imposed by this chapter or the payment of the tax is guilty of a class "D" felony.

3. A person required to pay tax, or to make, sign or file a monthly deposit form or return, who willfully makes a false or fraudulent monthly deposit form or return, or who willfully fails at the time required by law to pay at least ninety percent of the tax or fails to make, sign or file the monthly deposit form or return, is guilty of a fraudulent practice.

4. For purposes of determining the place of trial, the situs of an offense specified in this section is in the county of the residence of the person charged with the offense, unless that person is a nonresident of this state or the residence of that person cannot be established, in which event the situs of the offense is in Polk county.

5. A prosecution for an offense specified in this section shall be commenced within six years after its commission.

95 Acts, ch 83, §15
Subsections 2 and 3 amended

423.21 Books — examination.

Every retailer required or authorized to collect taxes imposed by this chapter and every person using in this state tangible personal property, services, or the product of services shall keep those records, receipts, invoices, and other pertinent papers as the director shall require, in the form that the director shall require. The director or any duly authorized agent of the department may examine the books, papers, records, and equipment of any person either selling tangible personal property or services or liable for the tax imposed by this chapter, and investigate the character of the business of any person in order to verify the accuracy of any return made, or if a return was not made by the person, ascertain and determine the amount due under this chapter. These books, papers, and records shall be made available within this state for examination upon reasonable notice when the director shall deem it advisable and shall so order. The preceding requirements shall likewise apply to users and persons rendering, furnishing, or performing service enumerated in section 422.43.

95 Acts, ch 83, §16
Section amended

423.24 Deposit of revenue — appropriations.

1. Eighty percent of all revenues derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to section 423.7 shall be deposited and credited as follows:

a. (1) Twenty-five percent of all such revenue, up to a maximum of four million two hundred fifty thousand dollars per quarter, shall be deposited into and credited to the Iowa comprehensive petroleum underground storage tank fund created in section 455G.3, and the moneys so deposited are a continuing

appropriation for expenditure under chapter 455G, and moneys so appropriated shall not be used for other purposes.

(2) Beginning January 1, 1996, through December 31, 1997, two million five hundred thousand dollars per quarter shall be deposited into and credited to the Iowa comprehensive petroleum underground storage tank marketability fund created in section 455G.21. Beginning January 1, 1998, through December 31, 2002, four million two hundred fifty thousand dollars per quarter shall be deposited into and credited to the Iowa comprehensive petroleum underground storage tank marketability fund created in section 455G.21. The moneys so deposited are a continuing appropriation to be expended in accordance with section 455G.21, and the moneys shall not be used for other purposes.

b. Beginning on July 1, 1993, three and one-half percent of the revenue, not to exceed one million dollars per quarter, derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to section 423.7, shall be used to support value-added agricultural products and processes as follows:

(1) Ninety-one and one-quarter percent of these moneys shall be deposited in the value-added agricultural products and processes financial assistance fund as created in section 15E.112.

(2) Eight and three-quarters percent of these moneys shall be deposited in the renewable fuels and coproducts fund as created in section 159A.7.

Moneys deposited according to this paragraph "b" are a continuing appropriation for expenditure under sections 15E.112 and 159A.7.

c. Any such revenues remaining shall be credited to the primary road fund to the extent necessary to reimburse that fund for the expenditures, not otherwise eligible to be made from the primary road fund, made for repairing, improving and maintaining bridges over the rivers bordering the state. Expenditures for those portions of bridges within adjacent states may be included when they are made pursuant to an agreement entered into under sections 313.63, 313A.34, and 314.10.

d. Any such revenues remaining shall be credited to the road use tax fund.

2. Twenty percent of all revenue derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to section 423.7 shall be deposited and credited one-half to the road use tax fund and one-half to the primary road fund to be used for the commercial and industrial highway network, except to the extent that the department directs that moneys are deposited in the highway safety patrol fund created in section 80.41 to fund the appropriations made from the highway safety patrol fund in accordance with the provisions of section 80.41. The department shall determine the amount of moneys to be credited under this subsection to the highway safety patrol fund and shall deposit that amount into the highway safety patrol fund.

3. All other revenue arising under the operation of this chapter shall be credited to the general fund of the state.

95 Acts, ch 215, §1; 95 Acts, ch 220, §24
 Subsection 1, paragraph b, will be stricken effective July 1, 2000; procedures; 94 Acts, ch 1119, §36; 95 Acts, ch 67, §49
 Subsection 1, paragraph a, subparagraph (2), will be stricken January 1, 2003; 95 Acts, ch 215, §29
 Subsection 1, paragraph a amended
 Subsection 2 amended

423.25 Taxation in another state.

If any person who causes tangible personal property to be brought into this state or who uses in this state services enumerated in section 422.43 has already paid a tax in another state in respect to the sale or use of the property or the performance of the

service, or an occupation tax in respect to the property, in an amount less than the tax imposed by this title,* the provisions of this title shall apply, but at a rate measured by the difference only between the rate fixed in this title and the rate by which the previous tax on the sale or use, or the occupation tax, was computed. If the tax imposed and paid in the other state is equal to or more than the tax imposed by this title, then a tax is not due in this state on the personal property or service.

95 Acts, ch 83, §17
 *This provision does not include chapters 421B, 427C, 435, 452A, and 453A, which were moved into this title by the Code editor. Chapters 421B, 427C, 435, 452A, and 453A contain the applicable provisions pertaining to those chapters.
 Section amended

CHAPTER 424

ENVIRONMENTAL PROTECTION CHARGE ON PETROLEUM DIMINUTION

424.3 Environmental protection charge imposed upon petroleum diminution.

1. An environmental protection charge is imposed upon diminution. A depositor shall collect from the receiver of petroleum deposited into a tank, the environmental protection charge imposed under this section on diminution each time petroleum is deposited into the tank, and pay the charge to the department as directed by this chapter.
2. The environmental protection charge shall be equal to the total volume of petroleum deposited in a tank multiplied by the diminution rate multiplied by the cost factor.
3. The diminution rate is one-tenth of one percent.
4. Diminution equals total volume of petroleum deposited multiplied by the diminution rate established in subsection 3.
5. The cost factor is an amount per gallon of diminution determined by the board pursuant to this subsection. The board, after public hearing, shall determine, or shall adjust, the cost factor to the greater of either an amount reasonably calculated to generate an annual average revenue, year to year, of

seventeen million dollars from the charge, excluding penalties and interest, or ten dollars. The board may determine or adjust the cost factor at any time but shall at minimum determine the cost factor at least once each fiscal year.

95 Acts, ch 215, §2
 Subsection 5 amended

424.13 Judicial review.

1. Judicial review of contested cases under this chapter may be sought in accordance with chapter 17A.
2. For cause and upon a showing by the director that collection of the tax in dispute is in doubt, the court may order the petitioner to file with the clerk a bond for the use of the respondent, with sureties approved by the clerk, in the amount of tax appealed from, conditioned that the petitioner shall perform the orders of the court.
3. An appeal may be taken by the charge payer or the director to the supreme court of this state irrespective of the amount involved.

95 Acts, ch 83, §18
 Subsection 2 stricken and rewritten

CHAPTER 426B

PROPERTY TAX RELIEF — MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES SERVICES

426B.1 Appropriations — property tax relief fund.

1. A property tax relief fund is created in the state treasury under the authority of the department of

revenue and finance. The fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state except in determining the cash position of the state for pay-

ment of state obligations. The moneys in the fund are not subject to the provisions of section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this section.* Moneys in the fund may be used for cash flow purposes, provided that any moneys so allocated are returned to the fund by the end of each fiscal year. However, the fund shall be considered a special account for the purposes of section 8.53, relating to elimination of any GAAP deficit. For the purposes of this chapter, unless the context otherwise requires, "property tax relief fund" means the property tax relief fund created in this section.

2. There is appropriated to the property tax relief fund for the indicated fiscal years from the general fund of the state the following amounts:

a. For the fiscal year beginning July 1, 1995, sixty-one million dollars.

b. For the fiscal year beginning July 1, 1996, seventy-eight million dollars.

c. For the fiscal year beginning July 1, 1997, and succeeding fiscal years, ninety-five million dollars.

95 Acts, ch 206, §17

**Chapter" probably intended; corrective legislation is pending

NEW section

426B.2 Property tax relief fund distributions.

Moneys in the property tax relief fund shall be utilized in each fiscal year as follows in the order listed:

1. The first sixty-one million dollars plus the amount paid pursuant to subsection 3 in the previous fiscal year in the property tax relief fund shall be distributed to counties under this subsection. A county's proportion of the moneys shall be equivalent to the sum of the following three factors:

a. One-third based upon the county's proportion of the state's general population.

b. One-third based upon the county's proportion of the state's total taxable property valuation assessed for taxes payable in the previous fiscal year.

c. One-third based upon the county's proportion of all counties' base year expenditures, as defined in section 331.438.

2. Payment of moneys to eligible counties of the state payment in accordance with the provisions of sections 331.438 and 331.439.

3. For the fiscal year beginning July 1, 1996, and succeeding fiscal years, the department of human services shall estimate the amount of moneys required for the state payment pursuant to subsection 2. Moneys remaining in the property tax relief fund following the payment made pursuant to subsection 1 and the estimated amount of the state payment pursuant to subsection 2 shall be paid for property tax relief in the same manner as provided in subsection 1 to counties eligible for state payment under subsection 2. These payments shall continue until the combined amount of the payments made under this subsection and subsection 1 are equal to fifty percent of the total of all counties' base year expenditures as defined in section 331.438. The amount of

moneys paid to a county pursuant to this subsection shall be added in subsequent fiscal years to the amount of moneys paid under subsection 1.

4. Moneys remaining in the property tax relief fund following the payments made pursuant to subsections 1, 2, and 3 shall be transferred to the homestead credit fund created in section 425.1. This transfer shall continue until the homestead credit is fully funded.

5. The department of human services shall notify the director of revenue and finance of the amounts due a county in accordance with the provisions of this section. The director of revenue and finance shall draw warrants on the property tax relief fund, payable to the county treasurer in the amount due to a county in accordance with subsections 1 and 3 and mail the warrants to the county auditors in September and March of each year. Warrants for the state payment in accordance with subsection 2 shall be mailed in January of each year.

95 Acts, ch 206, §18

Implementation provisions regarding property tax relief received by each county for 1995-1996 fiscal year; notification and reporting requirements;

95 Acts, ch 206, §21, 25

NEW section

Partial item veto applied

426B.3 Notification of relief fund payment.

1. The county auditor shall reduce the certified budget amount received from the board of supervisors for the succeeding fiscal year for the county mental health, mental retardation, and developmental disabilities services fund created in section 331.424A by an amount equal to the amount the county will receive from the property tax relief fund pursuant to section 426B.2, subsections 1 and 3, for the succeeding fiscal year and the auditor shall determine the rate of taxation necessary to raise the reduced amount. On the tax list, the county auditor shall compute the amount of taxes due and payable on each parcel before and after the amount received from the property tax relief fund is used to reduce the county budget. The director of revenue and finance shall notify the county auditor of each county of the amount of moneys the county will receive from the property tax relief fund pursuant to section 426B.2, subsections 1 and 3, for the succeeding fiscal year.

2. The amount of property tax dollars reduced on each parcel as a result of the moneys received from the property tax relief fund pursuant to section 426B.2, subsections 1 and 3, shall be noted on each tax statement prepared by the county treasurer pursuant to section 445.23.

95 Acts, ch 206, §19

NEW section

426B.4 Rules.

The council on human services shall consult with the state-county management committee created in section 331.438 and the director of revenue and finance in prescribing forms and adopting rules pursuant to chapter 17A to administer this chapter.

95 Acts, ch 206, §20

NEW section

CHAPTER 427

PROPERTY EXEMPT AND TAXABLE

427.1 Exemptions.

The following classes of property shall not be taxed:

1. *Federal and state property.* The property of the United States and this state, including state university, university of science and technology, and school lands. The exemption herein provided shall not include any real property subject to taxation under any federal statute applicable thereto, but such exemption shall extend to and include all machinery and equipment owned exclusively by the United States or any corporate agency or instrumentality thereof without regard to the manner of the affixation of such machinery and equipment to the land or building upon or in which such property is located, until such time as the Congress of the United States shall expressly authorize the taxation of such machinery and equipment.

2. *Municipal and military property.* The property of a county, township, city, school corporation, levee district, drainage district or military company of the state of Iowa, when devoted to public use and not held for pecuniary profit, except property of a municipally owned electric utility held under joint ownership and property of an electric power facility financed under chapter 28F which shall be subject to assessment and taxation under provisions of chapters 428 and 437. The exemption for property owned by a city or county also applies to property which is operated by a city or county as a library, art gallery or museum, conservatory, botanical garden or display, observatory or science museum, or as a location for holding athletic contests, sports or entertainment events, expositions, meetings or conventions, or leased from the city or county for any such purposes. Food and beverages may be served at the events or locations without affecting the exemptions, provided the city has approved the serving of food and beverages on the property if the property is owned by the city or the county has approved the serving of food and beverages on the property if the property is owned by the county.

3. *Public grounds and cemeteries.* Public grounds, including all places for the burial of the dead; and crematoriums with the land, not exceeding one acre, on which they are built and appurtenant thereto, so long as no dividends or profits are derived therefrom.

4. *Fire equipment and grounds.* Fire engines and all implements for extinguishing fires, and the publicly owned buildings and grounds used exclusively for keeping them and for meetings of fire companies.

5. Reserved.

6. *Property of associations of war veterans.* The property of any organization composed wholly of veterans of any war, when such property is devoted entirely to its own use and not held for pecuniary profit.

7. *Property of cemetery associations.* Burial grounds, mausoleums, buildings and equipment owned and operated by cemetery associations and used exclusively for the maintenance and care of the cemeteries devoted to interment of human bodies and human remains. The exemption granted by this subsection shall not apply to any property used for the practice of mortuary science.

8. *Libraries and art galleries.* All grounds and buildings used for public libraries, public art galleries, and libraries and art galleries owned and kept by private individuals, associations, or corporations, for public use and not for private profit.

9. *Property of religious, literary, and charitable societies.* All grounds and buildings used or under construction by literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects, not exceeding three hundred twenty acres in extent and not leased or otherwise used or under construction with a view to pecuniary profit. However, an organization mentioned in this subsection whose primary objective is to preserve land in its natural state may own or lease land not exceeding three hundred twenty acres in each county for its appropriate objects. All deeds or leases by which such property is held shall be filed for record before the property herein described shall be omitted from the assessment. All such property shall be listed upon the tax rolls of the district or districts in which it is located and shall have ascribed to it an actual fair market value and an assessed or taxable value, as contemplated by section 441.21, whether such property be subject to a levy or be exempted as herein provided and such information shall be open to public inspection.

10. Reserved.

11. *Property of educational institutions.* Real estate owned by any educational institution of this state as a part of its endowment fund, to the extent of one hundred sixty acres in any civil township except any real property acquired after January 1, 1965, by any educational institution as a part of its endowment fund or upon which any income is derived or used, directly or indirectly, for full or partial payment for services rendered, shall be taxed beginning with the levies applied for taxes payable in the year 1967, at the same rate as all other property of the same class in the taxing district in which the real property is located. The property acquired prior to January 1, 1965, and held or owned as part of the endowment fund of an educational institution shall be subject to assessment and levy in the assessment year 1974 for taxes payable in 1975. All the property shall be listed on the assessment rolls in the district in which the property is located and an actual fair market value and an assessed or taxable value be ascribed to it, as contemplated by section 441.21, irrespective of whether an exemption under this sub-

section may be or is affirmed, and the information shall be open to public inspection; it being the intent of this section that the property be valued whether or not it be subject to a levy. Every educational institution claiming an exemption under this subsection shall file with the assessor not later than February 1 of the year for which the exemption is requested, a statement upon forms to be prescribed by the director of revenue and finance, describing and locating the property upon which exemption is claimed. Property which is located on the campus grounds and used for student union purposes may serve food and beverages without affecting its exemption received pursuant to subsection 9 or this subsection.

12. *Homes for soldiers.* The buildings and grounds of homes owned and operated by organizations of soldiers, sailors, or marines of any of the wars of the United States when used for a home for disabled soldiers, sailors, or marines and not operated for pecuniary profit.

13. *Agricultural produce.* Growing agricultural and horticultural crops except commercial orchards and vineyards.

14. Reserved.

15. Reserved.

16. Reserved.

17. *Government lands.* Government lands entered and located, or lands purchased from this state, for the year in which the entry, location, or purchase is made.

18. Reserved.

19. Reserved.

20. *Public airports.* Any lands, the use of which (without charge by or compensation to the holder of the legal title thereto) has been granted to and accepted by the state or any political subdivision thereof for airport or aircraft landing area purposes.

21. Reserved.

22. Reserved.

23. *Statement of objects and uses filed.* A society or organization claiming an exemption under subsection 6 or subsection 9 of this section shall file with the assessor not later than July 1 a statement upon forms to be prescribed by the director of revenue and finance, describing the nature of the property upon which the exemption is claimed and setting out in detail any uses and income from the property derived from the rentals, leases, or other uses of the property not solely for the appropriate objects of the society or organization. Upon the filing and allowance of the claim, the claim shall be allowed on the property for successive years without further filing as long as the property is used for the purposes specified in the original claim for exemption. When the property is sold or transferred, the county recorder shall provide notice of the transfer to the assessor. The notice shall describe the property transferred and the name of the person to whom title to the property is transferred.

The assessor, in arriving at the valuation of any property of the society or organization, shall take into consideration any uses of the property not for the appropriate objects of the organization and shall

assess in the same manner as other property, all or any portion of the property involved which is leased or rented and is used regularly for commercial purposes for a profit to a party or individual. If a portion of the property is used regularly for commercial purposes an exemption shall not be allowed upon property so used and the exemption granted shall be in the proportion of the value of the property used solely for the appropriate objects of the organization, to the entire value of the property. However, the board of trustees or the board of directors of a hospital, as defined in section 135B.1, subsection 1, may permit use of a portion of the hospital for commercial purposes, and the hospital is entitled to full exemption for that portion used for nonprofit health-related purposes, upon compliance with the filing requirements of this subsection.

An exemption shall not be granted upon property upon or in which persistent violations of the laws of the state are permitted. A claimant of an exemption shall, under oath, declare that no violations of law will be knowingly permitted or have been permitted on or after January 1 of the year in which a tax exemption is requested. Claims for exemption shall be verified under oath by the president or other responsible head of the organization. A society or organization which ceases to use the property for the purposes stated in the claim shall provide written notice to the assessor of the change in use.

24. Reserved.

25. *Mandatory denial.* No exemption shall be granted upon any property which is the location of federally licensed devices not lawfully permitted to operate under the laws of the state.

26. *Revoking exemption.* Any taxpayer or any taxing district may make application to the director of revenue and finance for revocation for any exemption, based upon alleged violations of this chapter. The director of revenue and finance may also on the director's own motion set aside any exemption which has been granted upon property for which exemption is claimed under this chapter. The director of revenue and finance shall give notice by mail to the societies or organizations claiming an exemption upon property, exemption of which is questioned before or by the director of revenue and finance, and any order made by the director of revenue and finance revoking or modifying an exemption is subject to judicial review in accordance with the Iowa administrative procedure Act. Notwithstanding the terms of that Act, petitions for judicial review may be filed in the district court having jurisdiction in the county in which the property is located, and must be filed within thirty days after any order revoking an exemption is made by the director of revenue and finance.

27. *Tax provisions for armed forces.* If any person enters any branch of the armed service of the United States in time of national emergency, all personal property used in making the livelihood, in excess of three hundred dollars in value, of such person shall be assessed but no tax shall be due if

such person upon return from service, or in event of the person's death if the person's executor, administrator or next of kin, executes an affidavit to the county assessor that such property was not used in any manner during the person's absence, the tax as assessed thereon shall be waived and no payment shall be required.

28. Reserved.

29. Reserved.

30. *Rural water sales.* The real property of a nonprofit corporation engaged in the distribution and sale of water to rural areas when devoted to public use and not held for pecuniary profit.

31. *Assessed value of exempt property.* Each county and city assessor shall determine the assessment value that would be assigned to the property if it were taxable and value all tax exempt property within the assessor's jurisdiction. A summary report of tax exempt property shall be filed with the director of revenue and finance and the local board of review on or before April 16 of each year on forms prescribed by the director of revenue and finance.

32. *Pollution control and recycling.* Pollution-control or recycling property as defined in this subsection shall be exempt from taxation to the extent provided in this subsection, upon compliance with the provisions of this subsection.

This exemption shall apply to new installations of pollution-control or recycling property beginning on January 1 after the construction or installation of the property is completed. This exemption shall apply beginning on January 1, 1975, to existing pollution-control property if its construction or installation was completed after September 23, 1970, and this exemption shall apply beginning January 1, 1994, to recycling property.

This exemption shall be limited to the market value, as defined in section 441.21, of the pollution-control or recycling property. If the pollution-control or recycling property is assessed with other property as a unit, this exemption shall be limited to the net market value added by the pollution-control or recycling property, determined as of the assessment date.

Application for this exemption shall be filed with the assessing authority not later than the first of February of the first year for which the exemption is requested, on forms provided by the department of revenue and finance. The application shall describe and locate the specific pollution-control or recycling property to be exempted.

The application for a specific pollution-control or recycling property shall be accompanied by a certificate of the administrator of the environmental protection division of the department of natural resources certifying that the primary use of the pollution-control property is to control or abate pollution of any air or water of this state or to enhance the quality of any air or water of this state or, if the property is recycling property, that the primary use of the property is for recycling.

A taxpayer may seek judicial review of a determination of the administrator of the environmental

protection division or, on appeal, of the environmental protection commission in accordance with the provisions of chapter 17A.

The environmental protection commission of the department of natural resources shall adopt rules relating to certification under this subsection and information to be submitted for evaluating pollution control or recycling property for which a certificate is requested. The department of revenue and finance shall adopt any rules necessary to implement this subsection, including rules on identification and valuation of pollution-control or recycling property. All rules adopted shall be subject to the provisions of chapter 17A.

For the purposes of this subsection "*pollution-control property*" means personal property or improvements to real property, or any portion thereof, used primarily to control or abate pollution of any air or water of this state or used primarily to enhance the quality of any air or water of this state and "*recycling property*" means personal property or improvements to real property or any portion of the property, used primarily in the manufacturing process and resulting directly in the conversion of waste plastic, waste-paper products, or waste paperboard, into new raw materials or products composed primarily of recycled material. In the event such property shall also serve other purposes or uses of productive benefit to the owner of the property, only such portion of the assessed valuation thereof as may reasonably be calculated to be necessary for and devoted to the control or abatement of pollution, to the enhancement of the quality of the air or water of this state, or for recycling shall be exempt from taxation under this subsection.

For the purposes of this subsection "*pollution*" means air pollution as defined in section 455B.131 or water pollution as defined in section 455B.171. "*Water of the state*" means the water of the state as defined in section 455B.171. "*Enhance the quality*" means to diminish the level of pollutants below the air or water quality standards established by the environmental protection commission of the department of natural resources.

33. *Impoundment structures.* The impoundment structure and any land underlying an impoundment located outside an incorporated city, which are not developed or used directly or indirectly for non-agricultural income-producing purposes and which are maintained in a condition satisfactory to the soil and water conservation district commissioners of the county in which the impoundment structure and the impoundment are located. A person owning land which qualifies for a property tax exemption under this subsection shall apply to the county assessor each year before the first of July for the exemption. The application shall be made on forms prescribed by the department of revenue and finance. The first application shall be accompanied by a copy of the water storage permit approved by the administrator of the environmental protection division of the department of natural resources and a copy of the plan for the construction of the impoundment structure

and the impoundment. The construction plan shall be used to determine the total acre-feet of the impoundment and the amount of land which is eligible for the property tax exemption status. The county assessor shall annually review each application for the property tax exemption under this subsection and submit it, with the recommendation of the soil and water conservation district commissioners, to the board of supervisors for approval or denial. An applicant for a property tax exemption under this subsection may appeal the decision of the board of supervisors to the district court. As used in this subsection, "*impoundment*" means a reservoir or pond which has a storage capacity of at least eighteen acre-feet of water or sediment at the time of construction; "*storage capacity*" means the total area below the crest elevation of the principal spillway including the volume of any excavation in the area; and "*impoundment structure*" means a dam, earth-fill, or other structure used to create an impoundment.

34. *Low-rent housing.* The property owned and operated by a nonprofit organization providing low-rent housing for the elderly and the physically and mentally handicapped. The exemption granted under the provisions of this subsection shall apply only until the terms of the original low-rent housing development mortgage is paid in full or expires, subject to the provisions of subsections 23 and 24.

35. Reserved.

36. *Natural conservation or wildlife areas.* Recreational lakes, forest covers, rivers and streams, river and stream banks, and open prairies as designated by the board of supervisors of the county in which located. The board of supervisors shall annually designate the real property, not to exceed in the aggregate for the fiscal year beginning July 1, 1983, the greater of one percent of the acres assessed as agricultural land or three thousand acres in each county, for which this exemption shall apply. For subsequent fiscal years, the limitation on the maximum acreage of real property that may be granted exemptions shall be the limitation for the previous fiscal year, unless the amount of acreage granted exemptions for the previous fiscal year equaled the limitation for that year, then the limitation for the subsequent fiscal year is the limitation for the previous fiscal year plus an increase, not to exceed three hundred acres, of ten percent of that limitation. The procedures of this subsection shall be followed for each assessment year to procure an exemption for the fiscal year beginning in the assessment year. The exemption shall be only for the fiscal year for which it is granted. A parcel of property may be granted subsequent exemptions. The exemption shall only be granted for parcels of property of two acres or more.

Application for this exemption shall be filed with the commissioners of the soil and water conservation district in which the property is located, not later than April 15 of the assessment year, on forms provided by the department of revenue and finance. The application shall describe and locate the property to

be exempted and have attached to it an aerial photo of that property on which is outlined the boundaries of the property to be exempted. In the case of an open prairie which is or includes a gully area susceptible to severe erosion, an approved erosion control plan must accompany the application. Upon receipt of the application, the commissioners shall certify whether the property is eligible to receive the exemption. The commissioners shall not withhold certification of the eligibility of property because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the commissioners certify that the property is eligible, the application shall be forwarded to the board of supervisors by May 1 of that assessment year with the certification of the eligible acreage. An application must be accompanied by an affidavit signed by the applicant that if an exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted.

Before the board of supervisors may designate real property for the exemption, it shall establish priorities for the types of real property for which an exemption may be granted and the amount of acreage. These priorities may be the same as or different than those for previous years. The board of supervisors shall get the approval of the governing body of the city before an exemption may be granted to real property located within the corporate limits of that city. A public hearing shall be held with notice given as provided in section 73A.2 at which the proposed priority list shall be presented. However, no public hearing is required if the proposed priorities are the same as those for the previous year. After the public hearing, the board of supervisors shall adopt by resolution the proposed priority list or another priority list. Property upon which are located abandoned buildings or structures shall have the lowest priority on the list adopted, except where the board of supervisors determines that a structure has historic significance. The board of supervisors shall also provide for a procedure where the amount of acres for which exemptions are sought exceeds the amount the priority list provides for that type or in the aggregate for all types.

After receipt of an application with its accompanying certification and affidavit and the establishment of the priority list, the board of supervisors may grant a tax exemption under this subsection using the established priority list as a mandate. Real property designated for the tax exemption shall be designated by May 15 of the assessment year in which begins the fiscal year for which the exemption is granted. Notification shall be sent to the county auditor and the applicant.

The board of supervisors does not have to grant tax exemptions under this subsection, grant tax exemptions in the aggregate of the maximum acreage which may be granted exemptions, or grant a tax exemption for the total acreage for which the applicant requested the exemption. Only real property in parcels of two acres or more which is recreational lakes,

forest cover, river and stream, river and stream banks, or open prairie and which is utilized for the purposes of providing soil erosion control or wildlife habitat or both, and which is subject to property tax for the fiscal year for which the tax exemption is requested, is eligible for the exemption under this subsection. However, in addition to the above, in order for a gully area which is susceptible to severe erosion to be eligible, there must be an erosion control plan for it approved by the commissioners of the soil and water conservation district in which it is located. In the case of an exemption for river and stream or river and stream banks, the exemption shall not be granted unless there is included in the exemption land located at least thirty-three feet from the ordinary high water mark of the river and stream or river and stream banks. Property shall not be denied an exemption because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the real property is located within a city, the approval of the governing body must be obtained before the real property is eligible for an exemption. For purposes of this subsection:

a. "*Open prairies*" includes hillsides and gully areas which have a permanent grass cover but does not include native prairies meeting the criteria of the natural resource commission.

b. "*Forest cover*" means land which is predominantly wooded.

c. "*Recreational lake*" means a body of water, which is not a river or stream, owned solely by a non-profit organization and primarily used for boating, fishing, swimming and other recreational purposes.

d. "*Used for economic gain*" includes, but is not limited to, using property for the storage of equipment, machinery, or crops.

Notwithstanding other requirements under this subsection, the owner of any property lying between a river or stream and a dike which is required to be set back three hundred feet or less from the river or stream shall automatically be granted an exemption for that property upon submission of an application accompanied by an affidavit signed by the applicant that if the exemption is granted the property will not be used for economic gain during the period of exemption. The exemption shall continue from year to year for as long as the property qualifies and is not used for economic gain, without need for filing additional applications or affidavits. Property exempted pursuant to this paragraph is in addition to the maximum acreage applicable to other exemptions under this subsection.

37. *Native prairie and wetland.* Land designated as native prairie or land designated as a protected wetland by the department of natural resources pursuant to section 456B.12. Application for the exemption shall be made on forms provided by the department of revenue and finance. Land designated as a protected wetland shall be assessed at a value equal to the average value of the land where the wetland is located and which is owned by the person granted the exemption. The application forms shall be filed with the assessing authority not later than

the first of February of the year for which the exemption is requested. The application must be accompanied by an affidavit signed by the applicant that if the exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted. If the property is used for economic gain during the assessment year in which the exemption is granted, the property shall lose its tax exemption and shall be taxed at the rate levied by the county for the fiscal year beginning in that assessment year. The first annual application shall be accompanied by a certificate from the department of natural resources stating that the land is native prairie or protected wetland. The department of natural resources shall issue a certificate for the native prairie exemption if the department finds that the land has never been cultivated, is unimproved, is primarily a mixture of warm season grasses interspersed with flowering plants, and meets the other criteria established by the natural resource commission for native prairie. The department of natural resources shall issue a certificate for the wetland exemption if the department finds the land is a protected wetland, as defined under section 456B.1, or if the wetland was previously drained and cropped but has been restored under a nonpermanent restoration agreement with the department or other county, state, or federal agency or private conservation group. A taxpayer may seek judicial review of a decision of the department according to chapter 17A. The natural resource commission shall adopt rules to implement this subsection.

The assessing authority each year may submit to the department a claim for reimbursement of tax revenue lost from the exemption. Upon receipt of the claim, the department shall reimburse the assessing authority an amount equal to the lost tax revenue based on the value of the protected wetland as assessed by the authority, unless the department reimburses the authority based upon a departmental assessment of the protected wetland. The authority may contest the department's assessment as provided in chapter 17A. The department is not required to honor a claim submitted more than sixty days after the authority has assessed land where the protected wetland is located and which is owned by the person granted the exemption.

38. *Land certified as a wildlife habitat.* The owner of agricultural land may designate not more than two acres of the land for use as a wildlife habitat. After inspection, if the land meets the standards established by the natural resource commission for a wildlife habitat under section 483A.3, the department of natural resources shall certify the designated land as a wildlife habitat and shall send a copy of the certification to the appropriate assessor. The department of natural resources may subsequently withdraw certification of the designated land if it fails to meet the established standards for a wildlife habitat and the assessor shall be given written notice of the decertification.

39. *Right-of-way.* Railroad right-of-way and improvements on the right-of-way only during that

period of time that the Iowa railway finance authority holds an option to purchase the right-of-way under section 327I.24.

40. *Public television station.* All grounds and buildings used or under construction for a public television station and not leased or otherwise used or under construction for pecuniary profit.

41. *Speculative shell buildings of certain organizations.* New construction of shell buildings by community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities for speculative purposes or the portion of the value added to buildings being reconstructed or renovated by community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities in order to become speculative shell buildings. The exemption or partial exemption shall be allowed only pursuant to ordinance of a city council or board of supervisors, which ordinance shall specify if the exemption will be available for community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities and shall be effective for the assessment year in which the building is first assessed for property taxation or the assessment year in which the reconstruction or renovation first adds value and all subsequent years until the property is leased or sold or for a specific time period stated in the ordinance or until the exemption is terminated by ordinance of the city council or board of supervisors which approved the exemption. Eligibility for an exemption as a speculative shell building shall be determined as of January 1 of the assessment year. However, an exemption shall not be granted a speculative shell building of a not-for-profit cooperative association under chapter 499 or a for-profit entity if the building is used by the cooperative association or for-profit entity, or a subsidiary or majority owners thereof for other than as a speculative shell building. If the shell building or any portion of the shell building is leased or sold, the portion of the shell building which is leased or sold shall not be entitled to an exemption under this subsection for subsequent years. An application shall be filed pursuant to section 427B.4 for each project for which an exemption is claimed. Upon the sale of the shell building, the shell building shall be considered new construction for purposes of section 427B.1 if used for purposes set forth in section 427B.1.

For purposes of this subsection the following definitions apply:

a. (1) *"Community development organization"* means an organization, which meets the membership requirements of subparagraph (2), formed within a city or county or multicommunity group for one or more of the following purposes:

(a) To promote, stimulate, develop, and advance the business prosperity and economic welfare of the community, area, or region and its citizens.

(b) To encourage and assist the location of new business and industry.

(c) To rehabilitate and assist existing business and industry.

(d) To stimulate and assist in the expansion of business activity.

(2) For purposes of this definition, a community development organization must have at least fifteen members with representation from the following:

(a) A representative from government at the level or levels corresponding to the community development organization's area of operation.

(b) A representative from a private sector lending institution.

(c) A representative of a community organization in the area.

(d) A representative of business in the area.

(e) A representative of private citizens in the community, area, or region.

b. *"New construction"* means new buildings or structures and includes new buildings or structures which are constructed as additions to existing buildings or structures. *"New construction"* also includes reconstruction or renovation of an existing building or structure which constitutes complete replacement of an existing building or structure or refitting of an existing building or structure, if the reconstruction or renovation of the existing building or structure is required due to economic obsolescence, if the reconstruction or renovation is necessary to implement recognized industry standards for the manufacturing or processing of products, and the reconstruction or renovation is required in order to competitively manufacture or process products or for community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities to market a building or structure as a speculative shell building, which determination must receive prior approval from the city council of the city or county board of supervisors of the county.

c. *"Speculative shell building"* means a building or structure owned and constructed or reconstructed by a community development organization, a not-for-profit cooperative association under chapter 499, or a for-profit entity without a tenant or buyer for the purpose of attracting an employer or user which will complete the building to the employer's or user's specification for manufacturing, processing, or warehousing the employer's or user's product line.

42. *Joint water utilities.* The property of a joint water utility established under chapter 389, when devoted to public use and not held for pecuniary profit.

43. *Methane gas conversion.* Methane gas conversion property shall be exempt from taxation.

For purposes of this subsection, *"methane gas conversion property"* means personal property, real property, and improvements to real property, and machinery, equipment, and computers assessed as real property pursuant to section 427A.1, subsection 1, paragraphs "e" and "j", used in an operation connected with a publicly owned sanitary landfill to collect methane gas or other gases produced as a by-product of waste decomposition and to convert the gas to energy.

If the property used to convert the gas to energy also burns another fuel, the exemption shall apply to that portion of the value of such property which

equals the ratio that its use of methane gas bears to total fuel consumed.

Application for this exemption shall be filed with the assessing authority not later than February 1 of each year for which the exemption is requested on forms provided by the department of revenue and finance. The application shall describe and locate the specific methane gas conversion property to be exempted. If the property consuming methane gas also consumes another fuel, the first year application shall contain a statement to that effect and shall identify the other fuel and estimate the ratio that the methane gas consumed bears to the total fuel consumed. Subsequent year applications shall identify the actual ratio for the previous year which ratio shall be used to calculate the exemption for that assessment year.

95 Acts, ch 83, §19; 95 Acts, ch 84, §1-3
Subsections 5, 14, 18, 19, and 22 stricken
Subsection 41, unnumbered paragraph 1 and paragraphs b and c
amended

427.9 Suspension of taxes, assessments, and rates or charges, including interest, fees, and costs.

If a person is a recipient of federal supplementary security income or state supplementary assistance, as defined in section 249.1, or is a resident of a health care facility, as defined by section 135C.1, which is

receiving payment from the department of human services for the person's care, the person shall be deemed to be unable to contribute to the public revenue. The director of human services shall notify a person receiving such assistance of the tax suspension provision and shall provide the person with evidence to present to the appropriate county board of supervisors which shows the person's eligibility for tax suspension on parcels owned, possessed, or upon which the person is paying taxes as a purchaser under contract. The board of supervisors so notified, without the filing of a petition and statement as specified in section 427.8, shall order the county treasurer to suspend the collection of all the taxes, special assessments, and rates or charges, including interest, fees, and costs, assessed against the parcels and remaining unpaid by the person or contractually payable by the person, for such time as the person remains the owner or contractually prospective owner of the parcels, and during the period the person receives assistance as described in this section. The director of human services shall advise the person that the person may apply for an additional property tax credit pursuant to sections 425.16 to 425.39 which shall be credited against the amount of the taxes suspended.

95 Acts, ch 151, §1
Section amended

CHAPTER 427A

PERSONAL PROPERTY TAX REPLACEMENT

427A.1 Property taxed as real property.

1. For the purposes of property taxation only, the following shall be assessed and taxed, unless otherwise qualified for exemption, as real property:

- a. Land and water rights.
- b. Substances contained in or growing upon the land, before severance from the land, and rights to such substances. However, growing crops shall not be assessed and taxed as real property, and this paragraph is also subject to the provisions of section 441.22.
- c. Buildings, structures or improvements, any of which are constructed on or in the land, attached to the land, or placed upon a foundation whether or not attached to the foundation. However, property taxed under chapter 435 shall not be assessed and taxed as real property.
- d. Buildings, structures, equipment, machinery or improvements, any of which are attached to the buildings, structures, or improvements defined in paragraph "c" of this subsection.
- e. Machinery used in manufacturing establishments. The scope of property taxable under this paragraph is intended to be the same as, and neither broader nor narrower than, the scope of property taxable under section 428.22, Code 1973, prior to July 1, 1974.

f. Property taxed under chapter 499B.

g. Rights to space above the land.

h. Property assessed by the department of revenue and finance pursuant to sections 428.24 to 428.29, or chapters 433, 434 and 436 to 438.

i. Property used but not owned by the persons whose property is defined in paragraph "h" of this subsection, which would be assessed by the department of revenue and finance if the persons owned the property. However, this paragraph does not change the manner of assessment or the authority entitled to make the assessment.

j. (1) Computers. As used in this paragraph, "computer" means stored program processing equipment and all devices fastened to the computer by means of signal cables or communication media that serve the function of signal cables, but does not include point of sales equipment.

(2) Computer output microfilming equipment.

(3) Key entry devices that prepare information for input to a computer.

(4) All equipment that produces a final output from one of the facilities listed in subparagraphs (1), (2) and (3) of this paragraph.

k. Transmission towers and antennae not a part of a household.

2. As used in subsection 1, "attached" means any of the following:

- a. Connected by an adhesive preparation.
- b. Connected in a manner so that disconnecting requires the removal of one or more fastening devices, other than electric plugs.
- c. Connected in a manner so that removal requires substantial modification or alteration of the property removed or the property from which it is removed.

3. Notwithstanding the definition of "attached" in subsection 2, property is not "attached" if it is a kind of property which would ordinarily be removed when the owner of the property moves to another location. In making this determination the assessing authority shall not take into account the intent of the particular owner.

4. Notwithstanding the other provisions of this section, property described in this section, if held solely for sale, lease or rent as part of a business regularly engaged in selling, leasing or renting such property, and if the property is not yet sold, leased, rented or used by any person, shall not be assessed and taxed as real property. This subsection does not apply to any land or building.

5. Nothing in this section shall be construed to permit an item of property to be assessed and taxed in this state more than once in any one year.

6. The assessing authority shall annually reassess property which is assessed and taxed as real property, but which would be regarded as personal property except for this section. This section shall not be construed to limit the assessing authority's powers to assess or reassess under other provisions of law.

7. The director of revenue and finance shall promulgate rules subject to chapter 17A to carry out the intent of this section.

95 Acts, ch 67, §32

Subsection 1, unnumbered paragraph 1 amended

427A.2 Personal property not subject to property tax.

Personal property shall not be listed or assessed for taxation and is not subject to the property tax.

95 Acts, ch 67, §33

NEW section

427A.3 through 427A.6 Repealed by 94 Acts, ch 1173, § 42.

CHAPTER 427B

SPECIAL TAX PROVISIONS

DIVISION III

SPECIAL VALUATION FOR MACHINERY, EQUIPMENT, AND COMPUTERS — STATE REPLACEMENT FUNDS

427B.17 Property subject to special valuation.

1. For property defined in section 427A.1, subsection 1, paragraphs "e" and "j", acquired or initially leased on or after January 1, 1982, the taxpayer's valuation shall be limited to thirty percent of the net acquisition cost of the property, except as otherwise provided in subsections 2 and 3. For purposes of this section, "net acquisition cost" means the acquired cost of the property including all foundations and installation cost less any excess cost adjustment.

For purposes of this subsection:

a. Property acquired before January 1, 1982, which was owned or used before January 1, 1982, by a related person shall not receive the benefits of this subsection.

b. Property acquired on or after January 1, 1982, which was owned and used by a related person shall not receive any additional benefits under this subsection.

c. Property which was owned or used before January 1, 1982, and subsequently acquired by an exchange of like property shall not receive the benefits of this subsection.

d. Property which was acquired on or after January 1, 1982, and subsequently exchanged for like property shall not receive any additional benefits under this subsection.

e. Property acquired before January 1, 1982, which is subsequently leased to a taxpayer or related person who previously owned the property shall not receive the benefits of this subsection.

f. Property acquired on or after January 1, 1982, which is subsequently leased to a taxpayer or related person who previously owned the property shall not receive any additional benefits under this subsection.

For purposes of this subsection, "related person" means a person who owns or controls the taxpayer's business and another business entity from which property is acquired or leased or to which property is sold or leased. Business entities are owned or controlled by the same person if the same person directly or indirectly owns or controls fifty percent or more of the assets or any class of stock or who directly or indirectly has an interest of fifty percent or more in the ownership or profits.

2. Property defined in section 427A.1, subsection 1, paragraphs "e" and "j", which is first assessed for taxation in this state on or after January 1, 1995, shall be exempt from taxation.

3. Property defined in section 427A.1, subsection 1, paragraphs "e" and "j", and assessed under subsection 1 of this section, shall be valued by the local assessor as follows for the following assessment years:

a. For the assessment year beginning January 1, 1999, at twenty-two percent of the net acquisition cost.

b. For the assessment year beginning January 1, 2000, at fourteen percent of the net acquisition cost.

c. For the assessment year beginning January 1, 2001, at six percent of the net acquisition cost.

d. For the assessment year beginning January 1, 2002, and succeeding assessment years, at zero percent of the net acquisition cost.

4. Property assessed pursuant to this section shall not be eligible to receive a partial exemption under sections 427B.1 to 427B.6.

5. This section shall not apply to property assessed by the department of revenue and finance pursuant to sections 428.24 to 428.29, or chapters 433, 434, and 436 to 438, and such property shall not receive the benefits of this section.

Any electric power generating plant which operated during the preceding assessment year at a net capacity factor of more than twenty percent, shall not receive the benefits of this section or of sections 15.332 and 15.334. For purposes of this section, "electric power generating plant" means any name plate rated electric power generating plant, in which electric energy is produced from other forms of energy, including all taxable land, buildings, and equipment used in the production of such energy. "Net capacity factor" means net actual generation divided by the product of net maximum capacity times the number of hours the unit was in the active state during the assessment year. Upon commissioning, a unit is in the active state until it is decommissioned. "Net actual generation" means net electrical megawatt hours produced by the unit during the preceding assessment year. "Net maximum capacity" means the capacity the unit can sustain over a specified period when not restricted by ambient conditions or equipment deratings, minus the losses associated with station service or auxiliary loads.

6. The taxpayer's valuation of property defined in section 427A.1, subsection 1, paragraphs "e" and "j", and located in an urban renewal area for which an urban renewal plan provides for the division of taxes as provided in section 403.19 to pay the principal and interest on loans, advances, bonds issued under the authority of section 403.9, subsection 1, or indebtedness incurred by a city or county to finance an urban renewal project within the urban renewal area, if such loans, advances, or bonds were issued or indebtedness incurred, on or after January 1, 1982, and on or before June 30, 1995, shall be limited to thirty percent of the net acquisition cost of the property. Such property located in an urban renewal area shall not be valued pursuant to subsection 2 or 3, whichever is applicable, until the assessment year following the calendar year in which the obligations created by any loans, advances, bonds, or indebtedness payable from the division of taxes as provided in section 403.19 have been retired. The taxpayer's valuation for such property shall then be the valuation specified in subsection 2 or 3, whichever is applicable, for the applicable assessment year. If the loans, advances, or bonds issued, or indebtedness incurred between Jan-

uary 1, 1982, and June 30, 1995, are refinanced or refunded after June 30, 1995, the valuation of such property shall then be the valuation specified in subsection 2 or 3, whichever is applicable, for the applicable assessment year beginning with the assessment year following the calendar year in which any of those loans, advances, bonds, or other indebtedness are refinanced or refunded after June 30, 1995.

7. For the purpose of dividing taxes under section 260E.4 or 260F.4, the employer's or business's valuation of property defined in section 427A.1, subsection 1, paragraphs "e" and "j", and used to fund a new jobs training project which project's first written agreement providing for a division of taxes as provided in section 403.19 is approved on or before June 30, 1995, shall be limited to thirty percent of the net acquisition cost of the property. An employer's or business's taxable property used to fund a new jobs training project shall not be valued pursuant to subsection 2 or 3, whichever is applicable, until the assessment year following the calendar year in which the certificates or other funding obligations have been retired or escrowed. The taxpayer's valuation for such property shall then be the valuation specified in subsection 1 for the applicable assessment year. If the certificates issued, or other funding obligations incurred, between January 1, 1982, and June 30, 1995, are refinanced or refunded after June 30, 1995, the valuation of such property shall then be the valuation specified in subsection 2 or 3, whichever is applicable, for the applicable assessment year beginning with the assessment year following the calendar year in which those certificates or other funding obligations are refinanced or refunded after June 30, 1995.

95 Acts, ch 206, §29
Section amended

427B.18 Replacement.

Beginning with the fiscal year beginning July 1, 1996, each county treasurer shall be paid from the industrial machinery, equipment and computers replacement fund an amount equal to the amount of the industrial machinery, equipment and computers tax replacement claim, as calculated in section 427B.19.

95 Acts, ch 206, §30
NEW section

427B.19 Assessor and county auditor duties.

1. On or before July 1 of each fiscal year, the assessor shall determine the total assessed value of the property assessed under section 427B.17 for taxes payable in that fiscal year and the total assessed value of such property assessed as of January 1, 1994, and shall report the valuations to the county auditor.

2. On or before July 1 of each fiscal year, the assessor shall determine the valuation of all commercial and industrial property assessed for taxes payable in that fiscal year and the valuation of such property assessed as of January 1, 1994, and shall report the valuations to the county auditor.

3. On or before July 1, 1996, and on or before July 1 of each succeeding fiscal year through June 30, 2006, the county auditor shall prepare a statement,

based upon the report received pursuant to subsections 1 and 2, listing for each taxing district in the county:

a. Beginning with the assessment year beginning January 1, 1995, the difference between the assessed valuation of property assessed pursuant to section 427B.17 for that year and the total assessed value of such property assessed as of January 1, 1994. If the total assessed value of the property assessed as of January 1, 1994, is less, there is no tax replacement for the fiscal year.

b. The tax levy rate for each taxing district for that fiscal year.

c. The industrial machinery, equipment and computers tax replacement claim for each taxing district. For fiscal years beginning July 1, 1996, and ending June 30, 2001, the replacement claim is equal to the amount determined pursuant to paragraph "a", multiplied by the tax rate specified in paragraph "b". For fiscal years beginning July 1, 2001, and ending June 30, 2006, the replacement claim is equal to the product of the amount determined pursuant to paragraph "a", less any increase in valuations determined in paragraph "d", and the tax rate specified in paragraph "b". If the amount subtracted under paragraph "d" is more than the amount determined in paragraph "a", there is no tax replacement for the fiscal year.

d. Beginning with the assessment year beginning January 1, 2000, the auditor shall reduce the amount listed in paragraph "a", by the increase, if any, in assessed valuations of commercial and industrial property in the assessment year beginning January 1, 1994, and the assessment year for which taxes are due and payable in that fiscal year. If the calculation under this paragraph indicates a net decrease in aggregate valuation of such property, the industrial machinery, equipment and computers tax replacement claim for each taxing district is equal to the amount determined pursuant to paragraph "a", multiplied by the tax rate specified in paragraph "b".

4. The county auditor shall certify and forward one copy of the statement to the department of revenue and finance not later than July 1 of each year.

95 Acts, ch 206, §31
NEW section

427B.19A Fund created.

1. The industrial machinery, equipment and computers property tax replacement fund is created. For the fiscal year beginning July 1, 1996, through the

fiscal year ending June 30, 2006, there is appropriated annually from the general fund of the state to the department of revenue and finance to be credited to the industrial machinery, equipment and computers property tax replacement fund, an amount sufficient to implement this division.

2. If an amount appropriated for a fiscal year is insufficient to pay all claims, the director shall prorate the disbursements from the fund to the county treasurers and shall notify the county auditors of the pro rata percentage on or before August 1.

3. The replacement claims shall be paid to each county treasurer in equal installments in September and March of each year. The county treasurer shall apportion the replacement claim payments among the eligible taxing districts in the county.

95 Acts, ch 206, §32
NEW section

427B.19B Guarantee of state replacement funds.

For the fiscal years beginning July 1, 1996, and ending June 30, 2006, if the industrial machinery, equipment and computers property tax replacement fund is insufficient to pay in full the total of the amounts certified to the director of revenue and finance, the director shall compute for each county the difference between the total of all replacement claims for each taxing district within the county and the amount paid to the county treasurer for disbursement to each taxing district in the county. The assessor, for the assessment year for which taxes are due and payable in the fiscal year for which a sufficient appropriation was not made, shall revalue all industrial machinery, equipment and computers described in section 427B.17, subsections 2 and 3, in the county at a percentage of net acquisition cost which will yield from each taxing district its shortfall and the property shall be assessed and taxed in such manner for taxes due and payable in the following fiscal year in addition to being assessed and taxed in the applicable manner under section 427B.17. When conducting the revaluation, the assessor shall increase the percentage of net acquisition cost of such property by the same percentage point. Property tax dollar amounts certified pursuant to this section shall not be considered property tax dollars certified for purposes of the property tax limitation in chapter 444.

95 Acts, ch 206, §33
NEW section

CHAPTER 427C

FOREST AND FRUIT-TREE RESERVATIONS

427C.10 Restraint of livestock and limitation on use.

Cattle, horses, mules, sheep, goats, ostriches, rheas, emus, and swine shall not be permitted upon a fruit-tree or forest reservation. Fruit-tree and for-

est reservations shall not be used for economic gain other than the gain from raising fruit or forest trees.

95 Acts, ch 43, §11
Section amended

427C.12 Application — inspection — continuation of exemption — recapture of tax.

It shall be the duty of the assessor to secure the facts relative to fruit-tree and forest reservations by taking the sworn statement, or affirmation, of the owner or owners making application under this chapter; and to make special report to the county auditor of all reservations made in the county under the provisions of this chapter.

The board of supervisors shall designate the county conservation board or the assessor who shall inspect the area for which an application is filed for a fruit-tree or forest reservation tax exemption before the application is accepted. Use of aerial photographs may be substituted for on-site inspection when appropriate. The application can only be accepted if it meets the criteria established by the natural resource commission to be a fruit-tree or forest reservation. Once the application has been accepted, the area shall continue to receive the tax exemption during each year in which the area is maintained as a fruit-tree or forest reservation without the owner having to refile. If the property is sold or transferred, the seller shall notify the buyer that all, or part of, the property is in fruit-tree or forest reservation and subject to the recapture tax provisions of this section. The tax exemption shall continue to be granted for the remainder of the eight-year period for fruit-tree reservation and for the following years for forest reservation or until the property no longer qualifies as a fruit-tree or forest reservation. The area may be

inspected each year by the county conservation board or the assessor to determine if the area is maintained as a fruit-tree or forest reservation. If the area is not maintained or is used for economic gain other than as a fruit-tree reservation during any year of the eight-year exemption period and any year of the following five years or as a forest reservation during any year for which the exemption is granted and any of the five years following those exemption years, the assessor shall assess the property for taxation at its fair market value as of January 1 of that year and in addition the area shall be subject to a recapture tax. However, the area shall not be subject to the recapture tax if the owner, including one possessing under a contract of sale, and the owner's direct antecedents or descendants have owned the area for more than ten years. The tax shall be computed by multiplying the consolidated levy for each of those years, if any, of the five preceding years for which the area received the exemption for fruit-tree or forest reservation times the assessed value of the area that would have been taxed but for the tax exemption. This tax shall be entered against the property on the tax list for the current year and shall constitute a lien against the property in the same manner as a lien for property taxes. The tax when collected shall be apportioned in the manner provided for the apportionment of the property taxes for the applicable tax year.

95 Acts, ch 156, §1
 1995 amendment to unnumbered paragraph 2 applies to sales or transfers on or after May 4, 1995; 95 Acts, ch 156, §2
 Unnumbered paragraph 2 amended

CHAPTER 428

LISTING PROPERTY FOR TAXATION

428.1 Listing of property.

Every person shall list for the assessor all property subject to taxation in the state, of which the person is the owner, or has the control or management, in the following manner:

1. The property of one under disability, by the person having charge thereof.
2. The property of a married person, by either party.
3. The property of a beneficiary for whom the property is held in trust, by the trustee.
4. The property of a body corporate, company, society or partnership, by its principal accountant, officer, agent, or partner, as the assessor may demand.
5. Property under mortgage or lease is to be listed by and taxed to the mortgagor or lessor, unless listed by the mortgagee or lessee.

95 Acts, ch 83, §20
 Unnumbered paragraph 1 amended

428.23 Manufacturer to list.

Corporations organized for pecuniary profit and engaged in manufacturing as defined in section

428.20 shall list their real property in the same manner as is required of individuals.

95 Acts, ch 83, §21
 Section amended

428.27 Capital stock listed and assessed.
 Repealed by 95 Acts, ch 83, § 33.

428.37 Listing certain electric power generating plants.

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

a. "Taxable value" means one hundred percent of the actual value of an electric power generating plant.

b. "Electric power generating plant" means each taxable name plate rated electric power generating plant owned solely or jointly by any person or electric power facility financed under the provisions of chapter 28F in which electrical energy is produced from other forms of energy, including all equipment used in the production of such energy through its step-up transformer.

c. "Electric operating property" means all electric property belonging to such owner, as determined by the department of revenue and finance and assessed by it under this chapter and chapter 437, except electric power generating plants.

2. Notwithstanding section 428.25, the taxable value of an electric power generating plant placed in commercial service after December 31, 1972, shall be apportioned by the director of revenue and finance, commencing with the year 1973, as follows:

a. The first forty-four million, four hundred forty-four thousand, four hundred forty-five dollars of taxable value shall be apportioned to the taxing districts in which each such electric power generating plant is situated.

b. The remaining taxable value shall be apportioned to each taxing district in which electric operating property of the owner thereof is located, in the ratio that the actual value of that part of such owner's electric operating property which is located in the affected taxing district bears to the total actual value of the electric operating property of such owner located in the state. If the owner has no taxable property in this state other than the electric power generating plant which is assessed, then the remainder shall be assessed and levied on at the current rate of the taxing district in which the plant is located. Tax moneys received from such remainder assessments and levies shall be paid to the county treasurer, who shall pay such tax moneys to the treasurer of state not later than fifteen days from the date the moneys are received by the county treasurer for deposit in the general fund of the state.

c. Notwithstanding the provisions of paragraph "b" of this subsection, if the owner is a municipal electric utility or electric power facility financed under the provisions of chapter 28F, the remaining taxable value shall be allocated to each taxing district in which the municipal electric utility is serving

customers and has electric meters in operation in the ratio that the number of operating electric meters of the municipal electric utility located in the taxing district bears to the total number of operating electric meters of the municipal electric utility in the state as of January 1 of the calendar year in which the assessment is made. If the municipal electric utility or electric power facility financed under the provisions of chapter 28F has no operating electric meters in this state, then the remainder shall be assessed and levied on at the current rate of the taxing district in which the electric power generating plant is located. Tax moneys received from such remainder assessment and levies shall be paid to the county treasurer, who shall pay such tax moneys to the treasurer of state not later than fifteen days from the date the tax moneys are received by the county treasurer for deposit in the general fund of the state.

All municipal electric utilities which shall have taxable value apportioned under this section shall, annually on or before the first day of May of each calendar year, make a report listing the total operating meters of the municipal electric utility in each taxing district it serves as of the first day of January of each calendar year on forms provided by the department of revenue and finance.

d. If an electric power generating plant is jointly owned by two or more owners, each owner's pro rata share of the first forty-four million, four hundred forty-four thousand, four hundred forty-five dollars of taxable value shall be apportioned to the taxing district or districts in which such plant is situated. Each owner's pro rata share of the remainder of such taxable value shall be allocated as provided in paragraphs "b" and "c" of this subsection, whichever is applicable.

95 Acts, ch 83, §22
Subsection 2, unnumbered paragraph 1 amended

CHAPTER 428A

REAL ESTATE TRANSFER TAX

428A.2 Exceptions.

The tax imposed by this chapter shall not apply to:

1. Any executory contract for the sale of land under which the vendee is entitled to or does take possession thereof, or any assignment or cancellation thereof.
2. Any instrument of mortgage, assignment, extension, partial release, or satisfaction thereof.
3. Any will.
4. Any plat.
5. Any lease.
6. Any deed, instrument, or writing in which the United States or any agency or instrumentality thereof or the state of Iowa or any agency, instrumentality, or governmental or political subdivision thereof is the grantor, assignor, transferor, or con-

veyor; and any deed, instrument or writing in which any of such unit of government is the grantee or assignee where there is no consideration.

7. Deeds for cemetery lots.

8. Deeds which secure a debt or other obligation, except those included in the sale of real property.

9. Deeds for the release of a security interest in property excepting those pertaining to the sale of real estate.

10. Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded.

11. Deeds between husband and wife, or parent and child, without actual consideration. A cancellation of indebtedness alone which is secured by the property being transferred and which is not greater

than the fair market value of the property being transferred is not actual consideration within the meaning of this subsection.

12. Tax deeds.

13. Deeds of partition where the interest conveyed is without consideration. However, if any of the parties take shares greater in value than their undivided interest a tax is due on the greater values, computed at the rate set out in section 428A.1.

14. The making or delivering of instruments of transfer resulting from a corporate merger, consolidation, or reorganization under the laws of the United States or any state thereof, where such instrument states such fact on the face thereof.

15. Deeds between a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company and its stockholders, partners, or members for the purpose of transferring real property in an incorporation or corporate dissolution or the organization or dissolution of a partnership, limited partnership, limited liability partnership, or limited liability company under the laws of this state, where the deeds are given for no actual consideration other than for shares or for debt securities of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company. For purposes of this subsection, a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company is a corporation, partner-

ship, limited partnership, limited liability partnership, or limited liability company where the majority of the voting stock of the corporation, or of the ownership shares of the partnership, limited partnership, limited liability partnership, or limited liability company is held by and the majority of the stockholders, partners, or members are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related and where all of its stockholders, partners, or members are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons.

16. Deeds for the transfer of property or the transfer of an interest in property when the deed is executed between former spouses pursuant to a decree of dissolution of marriage.

17. Deeds transferring easements.

18. Deeds giving back real property to lienholders in lieu of forfeitures or foreclosures.

19. Deeds executed by public officials in the performance of their official duties.

20. Deeds transferring distributions of assets to heirs at law or devisees under a will.

21. Deeds in which the consideration is five hundred dollars or less.

95 Acts, ch 175, §1

Subsection 15 amended

CHAPTER 433

TELEGRAPH AND TELEPHONE COMPANIES TAX

433.4 Assessment.

The director of revenue and finance shall on the second Monday in July of each year, proceed to find the actual value of the property of these companies in this state, taking into consideration the information obtained from the statements required, and any further information the director can obtain, using the same as a means for determining the actual cash value of the property of these companies within this state. The director shall also take into consideration the valuation of all property of these companies, including franchises and the use of the property in connection with lines outside the state, and making these deductions as may be necessary on account of extra value of property outside the state as compared with the value of property in the state, in order that the actual cash value of the property of the company within this state may be ascertained. The assessment

shall include all property of every kind and character whatsoever, real, personal, or mixed, used by the companies in the transaction of telegraph and telephone business; and the property so included in the assessment shall not be taxed in any other manner than as provided in this chapter.

95 Acts, ch 83, §23

Section amended

433.12 "Company" defined.

"Company" as used in this chapter means any person, copartnership, association, corporation, or syndicate that owns or operates, or is engaged in operating, any telegraph or telephone line, whether formed or organized under the laws of this state or elsewhere.

95 Acts, ch 83, §24

Section amended

CHAPTER 435

TAX ON HOMES IN MOBILE HOME PARKS

435.1 Definitions.

The following definitions shall apply to this chapter:

1. "Home" means a mobile home, a manufactured home, or a modular home.

2. "Manufactured home" is a factory-built structure built under authority of 42 U.S.C. § 5403, is required by federal law to display a seal from the United States department of housing and urban development, and was constructed on or after June 15, 1976. If a manufactured home is placed in a mobile home park, the home must be titled and is subject to the mobile home square foot tax. If a manufactured home is placed outside a mobile home park, the home is to be assessed and taxed as real estate.

3. "Mobile home" means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons; but shall also include any such vehicle with motive power not registered as a motor vehicle in Iowa. A "mobile home" is not built to a mandatory building code, contains no state or federal seals, and was built before June 15, 1976. If a mobile home is placed outside a mobile home park, the home is to be assessed and taxed as real estate.

4. "Mobile home park" means a site, lot, field, or tract of land upon which three or more mobile homes, manufactured homes, or modular homes, or a com-

bination of any of these homes are placed on developed spaces and operated as a for-profit enterprise with water, sewer or septic, and electrical services available.

The term "mobile home park" shall not be construed to include mobile homes, buildings, tents or other structures temporarily maintained by any individual, educational institution, or company on their own premises and used exclusively to house their own labor or students.

A mobile home park must be classified as to whether it is a residential mobile home park or a recreational mobile home park or both. The mobile home park residential landlord tenant Act* only applies to residential mobile home parks.

5. "Modular home" means a factory-built structure built on a permanent chassis which is manufactured to be used as a place of human habitation, is constructed to comply with the Iowa state building code for modular factory-built structures, and must display the seal issued by the state building code commissioner. If a modular home is placed in a mobile home park, the home is subject to the annual tax as required by section 435.22. If a modular home is placed outside a mobile home park, the home shall be considered real property and is to be assessed and taxed as real estate.

95 Acts, ch 57, §10

*Ch 562B

Applicability date for 1995 amendments to subsection 4, unnumbered paragraph 1; 95 Acts, ch 57, §26

Subsection 4, unnumbered paragraph 1 stricken and rewritten

CHAPTER 437

ELECTRIC TRANSMISSION LINES TAX

437.1 "Company" defined.

"Company" as used in this chapter means any person, copartnership, association, corporation, or syndicate, except cooperative corporations or associations which are not organized or operated for profit, that owns or operates a transmission line or lines for the conducting of electric energy located within the state and wholly or partly outside cities, whether formed or organized under the laws of this state or elsewhere.

95 Acts, ch 83, §25
Section amended

437.12 Assessment exclusive.

Every transmission line or part of a transmission line, of which the director of revenue and finance is required by this chapter to find the value, shall be exempt from other assessment or taxation either

under sections 428.24 to 428.26, or under any other law of this state except as provided in this chapter.

95 Acts, ch 83, §26

Section amended

437.13 Local assessment.

All lands, buildings, machinery, poles, towers, wires, station and substation equipment, and other construction owned or operated by any company referred to in section 437.2, and where this property is located within any city within this state, shall be listed and assessed for taxation in the same manner as provided in sections 428.24, 428.25, and 428.29, for the listing and assessment of that part of the lands, buildings, machinery, tracks, poles, and wires within the limits of any city belonging to individuals or corporations furnishing electric light or power, and where this property, except the capital stock, is situ-

ated partly within and partly without the limits of a city. All personal property of every company owning or operating any transmission line referred to in section 437.2, used or purchased by it for the purpose of the transmission line, shall be listed and assessed

in the assessment district where usually kept and housed and under sections 428.26 and 428.29.

95 Acts, ch 83, §27
Section amended

CHAPTER 441

ASSESSMENT AND VALUATION OF PROPERTY

441.21 Actual, assessed and taxable value.

1. a. All property subject to taxation shall be valued at its actual value which shall be entered opposite each item, and, except as otherwise provided in this section, shall be assessed at one hundred percent of its actual value, and the value so assessed shall be taken and considered as the assessed value and taxable value of the property upon which the levy shall be made.

b. The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property except as otherwise provided in this section. "Market value" is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property. Sale prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at its market value. In arriving at market value, sale prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including but not limited to sales to immediate family of the seller, foreclosure or other forced sales, contract sales, discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit.

The actual value of special purpose tooling, which is subject to assessment and taxation as real property under section 427A.1, subsection 1, paragraph "e", but which can be used only to manufacture property which is protected by one or more United States or foreign patents, shall not exceed the fair and reasonable exchange value between a willing buyer and a willing seller, assuming that the willing buyer is purchasing only the special purpose tooling and not the patent covering the property which the special purpose tooling is designed to manufacture nor the rights to manufacture the patented property. For purposes of this paragraph, special purpose tooling includes dies, jigs, fixtures, molds, patterns, and similar property. The assessor shall not take into consideration the special value or use value to the present owner of the special purpose tooling which is

designed and intended solely for the manufacture of property protected by a patent in arriving at the actual value of the special purpose tooling.

c. In assessing and determining the actual value of special purpose industrial property having an actual value of five million dollars or more, the assessor shall equalize the values of such property with the actual values of other comparable special purpose industrial property in other counties of the state. Such special purpose industrial property includes, but is not limited to chemical plants. If a variation of ten percent or more exists between the actual values of comparable industrial property having an actual value of five million dollars or more located in separate counties, the assessors of the counties shall consult with each other and with the department of revenue and finance to determine if adequate reasons exist for the variation. If no adequate reasons exist, the assessors shall make adjustments in the actual values to provide for a variation of ten percent or less. For the purposes of this paragraph, special purpose industrial property includes structures which are designed and erected for operation of a unique and special use, are not rentable in existing condition, and are incapable of conversion to ordinary commercial or industrial use except at a substantial cost.

d. Actual value of property in one assessing jurisdiction shall be equalized as compared with actual value of property in an adjoining assessing jurisdiction. If a variation of five percent or more exists between the actual values of similar, closely adjacent property in adjoining assessing jurisdictions in Iowa, the assessors thereof shall determine whether adequate reasons exist for such variation. If no such reasons exist, the assessors shall make adjustments in such actual values to reduce the variation to five percent or less.

e. The actual value of agricultural property shall be determined on the basis of productivity and net earning capacity of the property determined on the basis of its use for agricultural purposes capitalized at a rate of seven percent and applied uniformly among counties and among classes of property. Any formula or method employed to determine productivity and net earning capacity of property shall be adopted in full by rule.

f. In counties or townships in which field work on a modern soil survey has been completed since Janu-

ary 1, 1949, the assessor shall place emphasis upon the results of the survey in spreading the valuation among individual parcels of such agricultural property.

g. Notwithstanding any other provision of this section, the actual value of any property shall not exceed its fair and reasonable market value, except agricultural property which shall be valued exclusively as provided in paragraph "e" of this subsection.

2. The market value of an inventory or goods in bulk shall be their market value as such inventory or goods in bulk, not their retail or unit price. Such market value shall be fair and reasonable based on market value of similar classes of property.

In the event market value of the property being assessed cannot be readily established in the foregoing manner, then the assessor may determine the value of the property using the other uniform and recognized appraisal methods including its productive and earning capacity, if any, industrial conditions, its cost, physical and functional depreciation and obsolescence and replacement cost, and all other factors which would assist in determining the fair and reasonable market value of the property but the actual value shall not be determined by use of only one such factor. The following shall not be taken into consideration: Special value or use value of the property to its present owner, and the good will or value of a business which uses the property as distinguished from the value of the property as property. Upon adoption of uniform rules by the revenue department or succeeding authority covering assessments and valuations of such properties, said valuation on such properties shall be determined in accordance therewith for assessment purposes to assure uniformity, but such rules shall not be inconsistent with or change the foregoing means of determining the actual, market, taxable and assessed values.

3. "Actual value", "taxable value", or "assessed value" as used in other sections of the Code in relation to assessment of property for taxation shall mean the valuations as determined by this section; however, other provisions of the Code providing special methods or formulas for assessing or valuing specified property shall remain in effect, but this section shall be applicable to the extent consistent with such provisions. The assessor and department of revenue and finance shall disclose at the written request of the taxpayer all information in any formula or method used to determine the actual value of the taxpayer's property.

The burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate, inequitable or capricious; however, in protest or appeal proceedings when the complainant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed.

4. For valuations established as of January 1, 1978, agricultural and residential property shall be assessed at a percentage of the actual value of each class of property. The percentage shall be determined for each class of property by the director of revenue for the state in accordance with the provisions of this section. For valuations established as of January 1, 1978, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend shall be the total equalized value of such property in the state in 1975, adjusted for additions or deletions to said value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment submitted in 1976 and 1977, plus six percent of the 1975 equalized value of such property or the amount of value added by the revaluation of existing properties in 1976, 1977 and 1978 whichever is less. The divisor shall be the total value of such property in the state as reported by the assessors on the abstracts of assessment submitted in 1977, plus the amount of value added in 1978 by the revaluation of existing properties.

5. For valuations established as of January 1, 1979, the percentage of actual value at which agricultural and residential property shall be assessed shall be the quotient of the dividend and divisor as defined in this section. The dividend for each class of property shall be the dividend as determined for each class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, plus six percent of the amount so determined. However, if the difference between the dividend so determined for either class of property and the dividend for that class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, is less than six percent, the 1979 dividend for the other class of property shall be the dividend as determined for that class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, plus a percentage of the amount so determined which is equal to the percentage by which the dividend as determined for the other class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the

revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, is increased in arriving at the 1979 dividend for the other class of property. The divisor for each class of property shall be the total actual value of all such property in the state in the preceding year, as reported by the assessors on the abstracts of assessment submitted for 1978, plus the amount of value added to said total actual value by the revaluation of existing properties in 1979 as equalized by the director of revenue pursuant to section 441.49. The director shall utilize information reported on abstracts of assessment submitted pursuant to section 441.45 in determining such percentage. For valuations established as of January 1, 1980, and each year thereafter, the percentage of actual value as equalized by the director of revenue and finance as provided in section 441.49 at which agricultural and residential property shall be assessed shall be calculated in accordance with the methods provided herein including the limitation of increases in agricultural and residential assessed values to the percentage increase of the other class of property if the other class increases less than the allowable limit adjusted to include the applicable and current values as equalized by the director of revenue and finance, except that any references to six percent in this subsection shall be four percent.

6. For valuations established as of January 1, 1979, commercial property and industrial property, excluding properties referred to in section 427A.1, subsection 6, shall be assessed as a percentage of the actual value of each class of property. The percentage shall be determined for each class of property by the director of revenue for the state in accordance with the provisions of this section. For valuations established as of January 1, 1979, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend for each class of property shall be the total actual valuation for each class of property established for 1978, plus six percent of the amount so determined. The divisor for each class of property shall be the valuation for each class of property established for 1978, as reported by the assessors on the abstracts of assessment for 1978, plus the amount of value added to the total actual value by the revaluation of existing properties in 1979 as equalized by the director of revenue pursuant to section 441.49. For valuations established as of January 1, 1979, property valued by the department of revenue pursuant to chapters 428, 433, 436, 437, and 438 shall be considered as one class of property and shall be assessed as a percentage of its actual value. The percentage shall be determined by the director of revenue in accordance with the provisions of this section. For valuations established as of January 1, 1979, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend shall be the total actual valuation established for 1978 by the department of revenue, plus ten percent of the amount so determined. The divisor for property valued by the department of revenue

pursuant to chapters 428, 433, 436, 437, and 438 shall be the valuation established for 1978, plus the amount of value added to the total actual value by the revaluation of the property by the department of revenue as of January 1, 1979. For valuations established as of January 1, 1980, commercial property and industrial property, excluding properties referred to in section 427A.1, subsection 6, shall be assessed at a percentage of the actual value of each class of property. The percentage shall be determined for each class of property by the director of revenue for the state in accordance with the provisions of this section. For valuations established as of January 1, 1980, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend for each class of property shall be the dividend as determined for each class of property for valuations established as of January 1, 1979, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1979, plus four percent of the amount so determined. The divisor for each class of property shall be the total actual value of all such property in 1979, as equalized by the director of revenue pursuant to section 441.49, plus the amount of value added to the total actual value by the revaluation of existing properties in 1980. The director shall utilize information reported on the abstracts of assessment submitted pursuant to section 441.45 in determining such percentage. For valuations established as of January 1, 1980, property valued by the department of revenue pursuant to chapters 428, 433, 436, 437, and 438 shall be assessed at a percentage of its actual value. The percentage shall be determined by the director of revenue in accordance with the provisions of this section. For valuations established as of January 1, 1980, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend shall be the total actual valuation established for 1979 by the department of revenue, plus eight percent of the amount so determined. The divisor for property valued by the department of revenue pursuant to chapters 428, 433, 436, 437, and 438 shall be the valuation established for 1979, plus the amount of value added to the total actual value by the revaluation of the property by the department of revenue as of January 1, 1980. For valuations established as of January 1, 1981, and each year thereafter, the percentage of actual value as equalized by the director of revenue and finance as provided in section 441.49 at which commercial property and industrial property, excluding properties referred to in section 427A.1, subsection 6, shall be assessed shall be calculated in accordance with the methods provided herein, except that any references to six percent in this subsection shall be four percent. For valuations established as of January 1, 1981, and each year thereafter, the percentage of actual value at which property valued by the department of rev-

enue and finance pursuant to chapters 428, 433, 436, 437, and 438 shall be assessed shall be calculated in accordance with the methods provided herein, except that any references to ten percent in this subsection shall be eight percent. Beginning with valuations established as of January 1, 1979, and each year thereafter, property valued by the department of revenue and finance pursuant to chapter 434 shall also be assessed at a percentage of its actual value which percentage shall be equal to the percentage determined by the director of revenue and finance for commercial property, industrial property, or property valued by the department of revenue and finance pursuant to chapters 428, 433, 436, 437, and 438, whichever is lowest.

7. Beginning with valuations established as of January 1, 1978, the assessors shall report the aggregate taxable values and the number of dwellings located on agricultural land and the aggregate taxable value of all other structures on agricultural land. Beginning with valuations established as of January 1, 1981, the agricultural dwellings located on agricultural land shall be valued at their market value as defined in this section and agricultural dwellings shall be valued as rural residential property and shall be assessed at the same percentage of actual value as is all other residential property.

8. For the purpose of computing the debt limitations for municipalities, political subdivisions and school districts, the term "*actual value*" means the "*actual value*" as determined by subsections 1 to 3 of this section without application of any percentage reduction and entered opposite each item, and as listed on the tax list as provided in section 443.2 as "*actual value*".

Whenever any board of review or other tribunal changes the assessed value of property, all applicable records of assessment shall be adjusted to reflect such change in both assessed value and actual value of such property.

9. a. Any normal and necessary repairs to a building, not amounting to structural replacements or modification, shall not increase the taxable value of the building. This paragraph applies only to repairs of two thousand five hundred dollars or less per building per year.

b. Notwithstanding paragraph "a", any construction or installation of a solar energy system on property so classified shall not increase the actual, assessed and taxable values of the property for five full assessment years.

c. As used in this subsection "*solar energy system*" means either of the following:

(1) A system of equipment capable of collecting and converting incident solar radiation or wind energy into thermal, mechanical or electrical energy and transforming these forms of energy by a separate apparatus to storage or to a point of use which is constructed or installed after January 1, 1978.

(2) A system that uses the basic design of the building to maximize solar heat gain during the cold season and to minimize solar heat gain in the hot

season and that uses natural means to collect, store and distribute solar energy which is constructed or installed after January 1, 1981.

In assessing and valuing the property for tax purposes, the assessor shall disregard any market value added by a solar energy system to a building. The director of revenue and finance shall adopt rules, after consultation with the department of natural resources, specifying the types of equipment and structural components to be included under the guidelines provided in this subsection.

10. Not later than November 1, 1979 and November 1 of each subsequent year, the director shall certify to the county auditor of each county the percentages of actual value at which residential property, agricultural property, commercial property, industrial property, and property valued by the department of revenue and finance pursuant to chapters 428, 433, 434, 436, 437, and 438 in each assessing jurisdiction in the county shall be assessed for taxation. The county auditor shall proceed to determine the assessed values of agricultural property, residential property, commercial property, industrial property, and property valued by the department of revenue and finance pursuant to chapters 428, 433, 434, 436, 437, and 438 by applying such percentages to the current actual value of such property, as reported to the county auditor by the assessor, and the assessed values so determined shall be the taxable values of such properties upon which the levy shall be made.

11. The percentage of actual value computed by the director for agricultural property, residential property, commercial property, industrial property and property valued by the department of revenue and finance pursuant to chapters 428, 433, 434, 436, 437, and 438 and used to determine assessed values of those classes of property does not constitute a rule as defined in section 17A.2, subsection 10.

12. Beginning with valuations established on or after January 1, 1995, as used in this section, "*residential property*" includes all land and buildings of multiple housing cooperatives organized under chapter 499A and includes land and buildings used primarily for human habitation which land and buildings are owned and operated by organizations that have received tax-exempt status under section 501(c)(3) of the Internal Revenue Code and rental income from the property is not taxed as unrelated business income under section 422.33, subsection 1A.

95 Acts, ch 83, §28; 95 Acts, ch 157, §1
 Subsection 12 applies retroactively to January 1, 1995, for assessment years beginning on or after that date; 95 Acts, ch 157, §2
 Subsection 9, paragraph b amended
 NEW subsection 12

441.31 Board of review.

1. The chairperson of the conference board shall call a meeting by written notice to all of the members of the board for the purpose of appointing a board of review for all assessments made by the assessor. The board of review may consist of either three members or five members. As nearly as possible this board shall include one licensed real estate broker and one

registered architect or person experienced in the building and construction field. In the case of a county, at least one member of the board shall be a farmer. Not more than two members of the board of review shall be of the same profession or occupation and members of the board of review shall be residents of the assessor jurisdiction. The terms of the members of the board of review shall be for six years, beginning with January 1 of the year following their selection. In boards of review having three members the term of one member of the first board to be appointed shall be for two years, one member for four years and one member for six years. In the case of boards of review having five members, the term of one member of the first board to be appointed shall be for one year, one member for two years, one member for three years, one member for four years and one member for six years.

2. However, notwithstanding the board of review appointed by the county conference board pursuant to subsection 1, a city council of a city having a population of seventy-five thousand or more which is a member of a county conference board may provide, by ordinance, for a city board of review to hear appeals

of property assessments by residents of that city. The members of the city board of review shall be appointed by the city council. The city shall pay the expenses incurred by the city board of review. All of the provisions of this chapter relating to the boards of review shall apply to a city board of review appointed pursuant to this subsection.

3. Notwithstanding the requirements of subsection 1, the conference board or a city council which has appointed a board of review may increase the membership of the board of review by an additional two members if it determines that as a result of the large number of protests filed or estimated to be filed the board of review will be unable to timely resolve the protests with the existing number of members. These two additional emergency members shall be appointed for a term set by the conference board or the city council but not for longer than two years. The conference board or the city council may extend the terms of the emergency members if it makes a similar determination as required for the initial appointment.

95 Acts, ch 74, §1
Section amended

CHAPTER 444

TAX LEVIES

444.25A Property tax limitations for 1996 and 1997 fiscal years.

1. *County limitation.* The maximum amount of property tax dollars which may be certified by a county for taxes payable in the fiscal year beginning July 1, 1995, shall not exceed the amount of property tax dollars certified by the county for taxes payable in the fiscal year beginning July 1, 1994, minus the amount of property tax relief moneys to be received by the county for the fiscal year beginning July 1, 1995, pursuant to section 426B.2, subsection 1, and the maximum amount of property tax dollars which may be certified by a county for taxes payable in the fiscal year beginning July 1, 1996, shall not exceed the amount of property tax dollars certified by the county for taxes payable in the fiscal year beginning July 1, 1995, minus the amount by which the property tax relief moneys to be received by the county in the fiscal year beginning July 1, 1996, pursuant to section 426B.2, subsections 1 and 3, exceed the amount of the property tax relief moneys received in the fiscal year beginning July 1, 1995, for each of the levies for the following, except for the levies on the increase in taxable valuation due to new construction, additions or improvements to existing structures, remodeling of existing structures for which a building permit is required, annexation, and phasing out of tax exemptions, and on the increase in valuation of taxable property as a result of a comprehensive revaluation by a private appraiser under a con-

tract entered into prior to January 1, 1992, or as a result of a comprehensive revaluation directed or authorized by the conference board prior to January 1, 1992, with documentation of the contract, authorization, or directive on the revaluation provided to the director of revenue and finance, if the levies are equal to or less than the levies for the previous year, levies on that portion of the taxable property located in an urban renewal project the tax revenues from which are no longer divided as provided in section 403.19, subsection 2, or as otherwise provided in this section:

a. General county services under section 331.422, subsection 1.

b. Rural county services under section 331.422, subsection 2.

c. Other taxes under section 331.422, subsection 4.

2. *Exceptions.* The limitations provided in subsection 1 do not apply to the levies made for the following:

a. Debt service to be deposited into the debt service fund pursuant to section 331.430.

b. Taxes approved by a vote of the people which are payable during the fiscal year beginning July 1, 1995, or July 1, 1996.

c. Hospitals pursuant to chapters 37, 347, and 347A.

d. Emergency management to be deposited into the local emergency management fund and expended for development of hazardous substance teams pursuant to chapter 29C.

e. Unusual need for additional moneys to finance existing programs which would provide substantial benefit to county residents or compelling need to finance new programs which would provide substantial benefit to county residents. The increase in taxes levied under this exception for the fiscal year beginning July 1, 1995, is limited to no more than the product of the total tax dollars levied in the fiscal year beginning July 1, 1994, and the percent change, computed to two decimal places, in the price index for government purchases by type for state and local governments computed for the third quarter of calendar year 1994 from that computed for the third quarter of calendar year 1993. The increase in taxes levied under this exception for the fiscal year beginning July 1, 1996, is limited to no more than the product of the total tax dollars levied in the fiscal year beginning July 1, 1995, and the percent change, computed to two decimal places, in the price index for government purchases by type for state and local governments computed for the third quarter of calendar year 1995 from that computed for the third quarter of calendar year 1994.

For purposes of this paragraph, the price index for government purchases by type for state and local governments is defined by the bureau of economic analysis of the United States department of commerce and published in table 7.11 of the national income and products accounts. For the fiscal years beginning July 1, 1995, and July 1, 1996, the price index used shall be the revision published in the November 1994 and November 1995 issues, respectively, of the United States department of commerce publication, "survey of current business". For purposes of this paragraph, tax dollars levied in the fiscal years beginning July 1, 1994, and July 1, 1995, shall not include funds levied for paragraphs "a", "b", and "c" of this subsection.

Application of this exception shall require an original publication of the budget and a public hearing and a second publication and a second hearing both in the manner and form prescribed by the director of the department of management, notwithstanding the provisions of section 331.434. The publications and hearings prescribed in this paragraph shall be held and the budget certified no later than March 15. The taxes levied for counties whose budgets are certified after March 15, 1995, shall be frozen at the fiscal year beginning July 1, 1994, level, and the taxes levied for counties whose budgets are certified after March 15, 1996, shall be frozen at the fiscal year beginning July 1, 1995, level.

3. *Appeal procedures.* In lieu of the procedures in sections 24.48 and 331.426, which procedures do not apply for taxes payable in the fiscal years beginning July 1, 1995, and July 1, 1996, if a county needs to raise property tax dollars from a tax levy in excess of the limitations imposed by subsection 1, the following procedures apply:

a. Not later than March 1, and after the publication and public hearing on the budget in the manner and form prescribed by the director of the

department of management, notwithstanding section 331.434, the county shall petition the state appeal board for approval of a property tax increase in excess of the increase provided for in subsection 2, paragraph "e", on forms furnished by the director of the department of management. Applications received after March 1 shall be automatically ineligible for consideration by the board.

b. Additional costs incurred by the county due to any of the following circumstances shall be the basis for justifying the excess in property tax dollars:

(1) Natural disaster or other life-threatening emergencies.

(2) Unusual need for additional moneys to finance existing programs which would provide substantial benefit to county residents or compelling need to finance new programs which would provide substantial benefit to county residents.

(3) Need for additional moneys for health care, treatment, and facilities, including treatment pursuant to section 331.424, subsection 1, paragraphs "a" and "b".

(4) Judgments, settlements, and related costs arising out of civil claims against the county and its officers, employees, and agents, as defined in chapter 670.

c. The state appeal board shall approve, disapprove, or reduce the amount of excess property tax dollars requested. The board shall take into account the intent of this section to provide property tax relief. The decision of the board shall be rendered at a regular or special meeting of the board within twenty days of the board's receipt of an appeal.

d. Within seven days of receipt of the decision of the state appeal board, the county shall adopt and certify its budget under section 331.434, which budget may be protested as provided in section 331.436. The budget shall not contain an amount of property tax dollars in excess of the amount approved by the state appeal board.

4. *Rate adjustment by county auditor.* In addition to the requirement of the county auditor in section 444.3 to establish a rate of tax which does not exceed the rate authorized by law, the county auditor shall also adjust the rate if the amount of property tax dollars to be raised is in excess of the amount specified in subsection 1, as may be adjusted pursuant to subsection 3.

95 Acts, ch 206, §11, 26
1995 amendments to subsection 3, paragraph b, subparagraph (3), are effective January 1, 1996, and apply to taxes payable in the fiscal year beginning July 1, 1996, and subsequent fiscal years; 95 Acts, ch 206, §12
Contingent repeal of section pursuant to 94 Acts, ch 1163, §8, is void due to funding of §249A.12, subsection 4, and §331.438 and 331.439; see 95 Acts, ch 202, §13-15; 95 Acts, ch 206, §22, 35; 95 Acts, ch 209, §30

Subsection 1 amended

Subsection 3, paragraph b, subparagraph (3) amended

444.25B Property tax limitation for fiscal year 1998.

1. *County limitation.* The maximum amount of property tax dollars which may be certified by a county for taxes payable in the fiscal year beginning July 1, 1997, shall not exceed the amount of property

tax dollars certified by the county for taxes payable in the fiscal year beginning July 1, 1996, minus the amount by which the property tax relief moneys to be received by the county in the fiscal year beginning July 1, 1997, pursuant to section 426B.2, subsections 1 and 3, exceed the amount of the property tax relief moneys received in the fiscal year beginning July 1, 1996, for each of the levies for the following, except for the levies on the increase in taxable valuation due to new construction, additions or improvements to existing structures, remodeling of existing structures for which a building permit is required, annexation, and phasing out of tax exemptions, and on the increase in valuation of taxable property as a result of a comprehensive revaluation by a private appraiser under a contract entered into prior to January 1, 1992, or as a result of a comprehensive revaluation directed or authorized by the conference board prior to January 1, 1992, with documentation of the contract, authorization, or directive on the revaluation provided to the director of revenue and finance, if the levies are equal to or less than the levies for the previous year, levies on that portion of the taxable property located in an urban renewal project the tax revenues from which are no longer divided as provided in section 403.19, subsection 2, or as otherwise provided in this section:

a. General county services under section 331.422, subsection 1.

b. Rural county services under section 331.422, subsection 2.

c. Other taxes under section 331.422, subsection 4.

2. *Exceptions.* The limitations provided in subsection 1 do not apply to the levies made for the following:

a. Debt service to be deposited into the debt service fund pursuant to section 331.430.

b. Taxes approved by a vote of the people which are payable during the fiscal year beginning July 1, 1997.

c. Hospitals pursuant to chapters 37, 347, and 347A.

d. Emergency management to be deposited into the local emergency management fund and expended for development of hazardous substance teams pursuant to chapter 29C.

e. Unusual need for additional moneys to finance existing programs which would provide substantial benefit to county residents or compelling need to finance new programs which would provide substantial benefit to county residents. The increase in taxes levied under this exception for the fiscal year beginning July 1, 1997, is limited to no more than the product of the total tax dollars levied in the fiscal year beginning July 1, 1996, and the percent change, computed to two decimal places, in the price index for government purchases by type for state and local governments computed for the third quarter of calendar year 1996 from that computed for the third quarter of calendar year 1995.

For purposes of this paragraph, the price index for government purchases by type for state and local

governments is defined by the bureau of economic analysis of the United States department of commerce and published in table 7.11 of the national income and products accounts. For the fiscal year beginning July 1, 1997, the price index used shall be the revision published in the November 1996 edition of the United States department of commerce publication, "survey of current business". For purposes of this paragraph, tax dollars levied in the fiscal year beginning July 1, 1996, shall not include funds levied for paragraphs "a", "b", and "c" of this subsection.

Application of this exception shall require an original publication of the budget and a public hearing and a second publication and a second hearing both in the manner and form prescribed by the director of the department of management, notwithstanding the provisions of section 331.434. The publications and hearings prescribed in this paragraph shall be held and the budget certified no later than March 15. The taxes levied for counties whose budgets are certified after March 15, 1997, shall be frozen at the fiscal year beginning July 1, 1996, level.

3. *Appeal procedures.* In lieu of the procedures in sections 24.48 and 331.426, which procedures do not apply for taxes payable in the fiscal year beginning July 1, 1997, if a county needs to raise property tax dollars from a tax levy in excess of the limitations imposed by subsection 1, the following procedures apply:

a. Not later than March 1, and after the publication and public hearing on the budget in the manner and form prescribed by the director of the department of management, notwithstanding section 331.434, the county shall petition the state appeal board for approval of a property tax increase in excess of the increase provided for in subsection 2, paragraph "e", on forms furnished by the director of the department of management. Applications received after March 1 shall be automatically ineligible for consideration by the board.

b. Additional costs incurred by the county due to any of the following circumstances shall be the basis for justifying the excess in property tax dollars:

(1) Natural disaster or other life-threatening emergencies.

(2) Unusual need for additional moneys to finance existing programs which would provide substantial benefit to county residents or compelling need to finance new programs which would provide substantial benefit to county residents.

(3) Need for additional moneys for health care, treatment, and facilities pursuant to section 331.424, subsection 1, paragraphs "a" and "b".

(4) Judgments, settlements, and related costs arising out of civil claims against the county and its officers, employees, and agents, as defined in chapter 670.

c. The state appeal board shall approve, disapprove, or reduce the amount of excess property tax dollars requested. The board shall take into account the intent of this section to provide property tax relief. The decision of the board shall be rendered at a regular or special meeting of the board within

twenty days of the board's receipt of an appeal.

d. Within seven days of receipt of the decision of the state appeal board, the county shall adopt and certify its budget under section 331.434, which budget may be protested as provided in section 331.436. The budget shall not contain an amount of property tax dollars in excess of the amount approved by the state appeal board.

4. *Rate adjustment by county auditor.* In addition to the requirement of the county auditor in section 444.3 to establish a rate of tax which does not exceed the rate authorized by law, the county auditor shall also adjust the rate if the amount of property tax dollars to be raised is in excess of the amount specified in subsection 1, as may be adjusted pursuant to subsection 3.

95 Acts, ch 206, §27
NEW section

444.26 Property tax levy limitations not affected.

Sections 444.25 and 444.25A shall not be construed as removing or otherwise affecting the property tax

limitations otherwise provided by law for any tax levy of the political subdivision, except that, upon an appeal from the political subdivision, the state appeal board may approve a tax levy consistent with the provisions of section 24.48 or 331.426.

Contingent repeal of 1994 amendments pursuant to 94 Acts, ch 1163, §8, is void due to funding of §249A.12, subsection 4, and §331.438 and 331.439; see 95 Acts, ch 202, §13-15; 95 Acts, ch 206, §22, 35; 95 Acts, ch 209, §30
Section not amended; footnote added

444.27 Sections void.

1. For purposes of section 444.25, sections 24.48 and 331.426 are void for the fiscal years beginning July 1, 1993, and July 1, 1994. For purposes of section 444.25A, sections 24.48 and 331.426 are void for the fiscal years beginning July 1, 1995, and July 1, 1996.

2. For purposes of section 444.25B, sections 24.48 and 331.426 are void for the fiscal year beginning July 1, 1997.

95 Acts, ch 206, §28

Contingent repeal of 1994 amendments pursuant to 94 Acts, ch 1163, §8, is void due to funding of §249A.12, subsection 4, and §331.438 and 331.439; see 95 Acts, ch 202, §13-15; 95 Acts, ch 206, §22, 35; 95 Acts, ch 209, §30
Section amended

CHAPTER 445

TAX COLLECTION

445.1 Definition of terms.

For the purpose of this chapter and chapters 446, 447, and 448, section 331.553, subsection 3, and sections 427.8 through 427.12 and 569.8:

1. "*Abate*" means to cancel in their entirety all applicable amounts.

2. "*Compromise*" means to enter into a contractual agreement for the payment of taxes, interest, fees, and costs in amounts different from those specified by law.

3. "*County system*" means a method of data storage and retrieval as approved by the auditor of state including, but not limited to, tax lists, books, records, indexes, registers, or schedules.

4. "*Parcel*" means each separate item shown on the tax list, mobile home tax list, schedule of assessment, or schedule of rate or charge.

5. "*Rate or charge*" means an item, including rentals, legally certified to the county treasurer for collection as provided in sections 331.465, 331.489, 358.20, 364.11, 364.12, and 468.589 and section 384.84, subsection 3.

6. "*Taxes*" means an annual ad valorem tax, a special assessment, a drainage tax, a rate or charge, and taxes on homes pursuant to chapter 435 which are collectible by the county treasurer.

7. "*Total amount due*" means the aggregate total of all taxes, penalties, interest, costs, and fees due on a parcel.

95 Acts, ch 57, §11
Subsection 6 amended

445.3 Actions authorized.

In addition to all other remedies and proceedings now provided by law for the collection of taxes, the county treasurer may bring or cause an ordinary suit at law to be commenced and prosecuted in the treasurer's name for the use and benefit of the county for the collection of taxes from any person, as shown by the county system in the treasurer's office, and the suit shall be in all respects commenced, tried, and prosecuted to final judgment the same as provided for ordinary actions.

The commencement of actions for ad valorem taxes authorized under this section shall not begin until the issuance of a tax sale certificate under the requirements of section 446.19. The commencement of actions for all other taxes authorized under this section shall not begin until ten days after the publication of tax sale under the requirements of section 446.9, subsection 2. This paragraph does not apply to the collection of ad valorem taxes under section 445.32, grain handling taxes under section 428.35, and moneys and credits taxes under chapter 430A.

Notwithstanding the provisions in section 535.3, interest on the judgment shall be at the rate provided in section 447.1 and shall commence from the month of the commencement of the action. This interest shall be in lieu of the interest assessed under section 445.39 from and after the month of the commencement of the action.

An appeal may be taken to the Iowa supreme court

as in other civil cases regardless of the amount involved.

Notwithstanding any other provisions in this section, if the treasurer is unable or has reason to believe that the treasurer will be unable to offer land at the annual tax sale to collect the total amount due, the treasurer may immediately collect the total amount due by the commencement of an action under this section.

Notwithstanding any other provision of law, if a statute authorizes the collection of a delinquent tax, assessment, rate, or charge by tax sale, the tax, assessment, rate, or charge, including interest, fees, and costs, may also be collected under this section and section 445.4.

This section is remedial and shall apply to all delinquent taxes included in a tax sale certificate of purchase issued to a county. Upon assignment of a county-held tax sale certificate, this section shall not apply to the assignee.

95 Acts, ch 57, §12
NEW unnumbered paragraph 7

445.4 Statutes applicable — attachment — damages.

Chapter 639 is applicable to proceedings instituted by a county treasurer under section 445.3, and a writ of attachment shall be issued upon the treasurer complying with the provisions of chapter 639, for taxes, whether due or not due, except that a bond shall not be required from the treasurer or county in such cases, but the county shall be liable for damages only, as provided by section 639.14. The county attorney, upon request of the treasurer, shall assist in prosecution of actions authorized in this section.

This section is remedial and shall apply to all delinquent taxes included in a tax sale certificate of purchase issued to a county. Upon assignment of a county-held tax sale certificate, this section shall not apply to the assignee.

95 Acts, ch 57, §13
NEW unnumbered paragraph 2

445.16 Abatement or compromise of tax.

If the county holds the tax sale certificate of purchase, the county, through the board of supervisors, may compromise by written agreement, or abate by resolution, the tax, interest, fees, or costs. In the event of a compromise, the board of supervisors may

enter into a written agreement with the owner of the legal title or with any lienholder for the payment of a stipulated sum in full satisfaction of all amounts included in that agreement. In addition, if a parcel is offered at regular tax sale and is not sold, the county, prior to public bidder sale to the county under section 446.19, may compromise by written agreement, or abate by resolution, the tax, interest, fees, or costs, as provided in this section.

A copy of the agreement or resolution shall be filed with the county treasurer.

If the treasurer determines that it is impractical to pursue collection of the total amount due through the tax sale and the personal judgment remedies, the treasurer shall make a written recommendation to the board of supervisors to abate the amount due. The board of supervisors shall abate, by resolution, the amount due and direct the treasurer to strike the amount due from the county system.

95 Acts, ch 57, §14
NEW unnumbered paragraph 3

445.37 When delinquent.

If the semiannual installment of any tax has not been paid before October 1 succeeding the levy, that amount becomes delinquent from October 1 after due, including those instances when the last day of September is a Saturday or Sunday. If the second installment is not paid before April 1 succeeding its maturity, it becomes delinquent from April 1 after due, including those instances when the last day of March is a Saturday or Sunday. This paragraph applies to all taxes as defined in section 445.1, subsection 6.

However, if there is a delay in the delivery of the tax list referred to in chapter 443 to the county treasurer, the amount of ad valorem taxes and mobile home taxes due shall become delinquent thirty days after the date of delivery or on the delinquent date of the first installment, whichever date occurs later. The delay shall not affect the due dates for special assessments and rates or charges. The delinquent date for special assessments and rates or charges is the same as the first installment delinquent date for ad valorem taxes, including any extension, in absence of a statute to the contrary.

95 Acts, ch 57, §15
Unnumbered paragraph 1 amended

CHAPTER 446

TAX SALES

446.15 Offer for sale.

The county treasurer shall offer for sale, on the day of the sale, each parcel separately for the total amount due against each parcel advertised for sale.

95 Acts, ch 57, §16
Section amended

446.16 Bid — purchaser.

The person who offers to pay the total amount due, which is a lien on any parcel, for the smallest percentage of the parcel is the purchaser, and when the purchaser designates the percentage of any parcel for which the purchaser will pay the total amount due,

the percentage thus designated shall give the person an undivided interest upon the issuance of a treasurer's deed, as provided in chapter 448. If two or more persons have placed an equal bid and the bids are the smallest percentage offered, the county treasurer shall use a random selection process to select the bidder to whom a certificate of purchase will be issued.

The delinquent tax lien transfers with the tax sale certificate, whether held by the county or purchased by an individual, through assignment or direct purchase at the tax sale. The delinquent tax sale lien expires when the tax sale certificate expires.

95 Acts, ch 57, §17
Section amended

446.19 County or city as purchaser.

When a parcel is offered at a tax sale under section 446.18, and no bid is received, or if the bid received is less than the total amount due, the county in which the parcel is located, through its county treasurer, shall bid for the parcel a sum equal to the total amount due. Money shall not be paid by the county or other tax-levying or tax-certifying body for the purchase, but each of the tax-levying and tax-certifying bodies having any interest in the taxes shall be charged with the total amount due the tax-levying or tax-certifying body as its just share of the purchase price.

This section does not prohibit a governmental agency or political subdivision from bidding at the sale for a parcel to protect its interests. When a bid is received from a city in which the parcel is located, money shall not be paid by the city, but each of the tax-levying and tax-certifying bodies having any interest in the taxes shall be charged with the total amount due the tax-levying or tax-certifying body as its just share of the purchase price.

95 Acts, ch 57, §18
Unnumbered paragraph 1 amended

446.20 Remedies.

1. Without limiting the county's rights under section 445.3, once a certificate is issued to a county, a county may collect the total amount due by the alternative remedy provided in section 445.3 by converting the total amount due to a personal judgment. Entrance of the judgment shall be shown on the county system. Collection of the judgment may then be initiated as provided in section 445.4. The county attorney shall, upon request of the county treasurer, assist in prosecution of action authorized under this section and sections 445.3 and 445.4.

The remedies associated with tax sale and personal judgment may be simultaneously pursued until such time as the total amount due has been collected or otherwise discharged. If the total amount due is collected pursuant to a personal judgment, the tax sale shall be canceled by the treasurer. If a tax deed is issued, any personal judgment shall be released and a satisfaction of judgment shall be filed with the clerk of the appropriate district court.

2. If the board or council determines that any property located on a parcel purchased by the county

or city pursuant to section 446.19 requires removal, dismantling, or demolition, the board or council shall, at the same time and in the same manner that the notice of expiration of right of redemption is served, cause to be served on the person in possession of the parcel and also upon the person in whose name the parcel is taxed a separate notice stating that if the parcel is not redeemed within the time period specified in the notice of expiration of right of redemption, the property described in the notice shall be removed, dismantled, or demolished. The notice shall further state that the costs of removal, dismantling, or demolition shall be assessed against the person in whose name the parcel is taxed and a lien for the costs shall be placed against any other parcel taxed in that person's name within the county.

Service of the notice shall also be made by mail on any mortgagee having a lien upon the parcel, a vendor of the parcel under a recorded contract of sale, a lessor who has a recorded lease or memorandum of a recorded lease, and any other person who has an interest of record, at the person's last known address, if the mortgagee, vendor, lessor, or other person has filed a request for notice, as prescribed in section 446.9, subsection 3, and on the state of Iowa in case of an old-age assistance lien by service upon the department of human services. The notice shall also be served on any city where the parcel is situated.

3. This section is remedial and shall apply to all delinquent taxes included in a tax sale certificate of purchase issued to a county. Upon assignment of a county-held tax sale certificate, this section shall not apply to the assignee.

95 Acts, ch 57, §19
NEW subsection 3

446.31 Assignment — presumption from deed recitals.

The certificate of purchase is assignable by endorsement and entry in the county system in the office of county treasurer of the county from which the certificate was issued, and when the assignment is so entered and the assignment transaction fee paid, it shall vest in the assignee or legal representatives of the assignee all the right and title of the assignor. The statement in the treasurer's deed of the fact of the assignment is presumptive evidence of that fact. For each assignment transaction, the treasurer shall charge the assignee an assignment transaction fee of ten dollars to be deposited in the county general fund. The assignment transaction fee shall not be added to the amount necessary to redeem.

When the county acquires a certificate of purchase, the county may assign the certificate for the total amount due as of the date of assignment or compromise the total amount due and assign the certificate. An assignment or a compromise and assignment shall be by written agreement. A copy of the agreement shall be filed with the treasurer. For each assignment transaction, the treasurer shall collect from the assignee an assignment transaction fee of ten dollars to be deposited in the county general fund.

The assignment transaction fee shall not be added to the amount necessary to redeem. All money received from the assignment of county-held certificates of purchase shall be apportioned to the tax-levying and certifying bodies in proportion to their interests in the taxes for which the parcel was sold with all interest, fees, and costs deposited in the county general fund. After assignment of a certificate of purchase which is held by the county, section 446.37 applies. In that instance, the three-year requirement shall be calculated from the date the assignment is recorded by the treasurer in the county system. When

the assignment is entered and the assignment transaction fee is paid, all of the rights and title of the assignor shall vest in the assignee or the legal representative of the assignee. The statement in the treasurer's deed of the fact of the assignment is presumptive evidence of that fact.

A certificate of purchase for a parcel shall not be assigned to a person, other than a municipality, who is entitled to redeem that parcel.

95 Acts, ch 57, §20

Unnumbered paragraph 1 divided and amended

CHAPTER 447

TAX REDEMPTION

447.9 Notice of expiration of right of redemption.

After one year and nine months from the date of sale, or after nine months from the date of a sale made under section 446.18, 446.38 or 446.39, the holder of the certificate of purchase may cause to be served upon the person in possession of the parcel, and also upon the person in whose name the parcel is taxed, in the manner provided for the service of original notices in R.C.P. 56.1, if the person resides in Iowa, or otherwise as provided in section 446.9, subsection 1, a notice signed by the certificate holder or the certificate holder's agent or attorney, stating the date of sale, the description of the parcel sold, the name of the purchaser, and that the right of redemption will expire and a deed for the parcel be made unless redemption is made within ninety days from the completed service of the notice. The ninety-day redemption period begins as provided in section 447.12. When the notice is given by a county as a holder of a certificate of purchase the notice shall be signed by the county treasurer or the county attorney, and when given by a city, it shall be signed by the city officer designated by resolution of the council. When

the notice is given by the Iowa finance authority or a city or county agency holding the parcel as part of an Iowa homesteading project, it shall be signed on behalf of the agency or authority by one of its officers, as authorized in rules of the agency or authority.

Service of the notice shall be made by mail on any mortgagee having a lien upon the parcel, a vendor of the parcel under a recorded contract of sale, a lessor who has a recorded lease or recorded memorandum of a lease, and any other person who has an interest of record, at the person's last known address. The notice shall be served on any city where the parcel is situated. Notice shall not be served after the filing of the affidavit required by section 447.12. Only those persons who are required to be served the notice of expiration as provided in this section or who have acquired an interest in or possession of the parcel subsequent to the filing of the notice of expiration of the right of redemption are eligible to redeem a parcel from tax sale.

95 Acts, ch 57, §21; 95 Acts, ch 67, §34

See Code editor's note to §13B.8

Unnumbered paragraph 2 amended

CHAPTER 448

TAX DEEDS

448.3 Execution and effect of deed.

The deed shall be signed by the county treasurer as such, and acknowledged by the treasurer before some officer authorized to take acknowledgments, and when substantially thus executed and recorded in the proper record in the office of the recorder of the county in which the parcel is situated, shall vest in the purchaser all the right, title, interest, and estate of the former owner in and to the parcel conveyed, subject to all restrictive covenants, resulting from

prior conveyances in the chain of title to the former owner, all the right and interest of a holder of a certificate of purchase from a tax sale occurring after the tax sale for which the deed was issued, and all the right, title, interest, and claim of the state and county to the parcel. The issuance of the deed shall operate to cancel all suspended taxes.

95 Acts, ch 57, §22

Section amended

448.15 Affidavit by tax-title holder.

Immediately after the issuance and recording of a tax deed or an instrument purporting to be a tax deed issued by a county treasurer of this state, the then owner or holder of the title or purported title may file with the county recorder of the county in which the parcel is located an affidavit substantially in the following form:

State of Iowa,)
..... County.) ss.

I,, being first duly sworn, on oath depose and say that on (date) the county treasurer issued a tax deed to (grantee) for the following described parcel:; that the tax deed was filed for record in the office of the county recorder of county, Iowa, on (date), and appears in the records of the office in county as recorded in Book Page of the Records; and that claims title to an undivided percent interest in the parcel by virtue of the tax deed, or purported tax title.

Any person claiming any right, title, or interest in or to the parcel adverse to the title or purported title by virtue of the tax deed referred to shall file a claim with the recorder of the county where the parcel is located, within one hundred twenty days after the filing of this affidavit, the claim to set forth the nature of the interest, also the time and manner in which the interest claimed was acquired.

.....
Subscribed and sworn to before me this day of, 19.....

.....
Notary Public in and for
..... County, Iowa.

95 Acts, ch 57, §23
Unnumbered paragraph 2 amended

**CHAPTER 450
INHERITANCE TAX**

450.7 Lien of tax.

1. Except for the share of the estate passing to the surviving spouse, the tax is a charge against and a lien upon the estate subject to tax under this chapter, and all property of the estate or owned by the decedent from the death of the decedent until paid, subject to the following limitation:

Inheritance taxes owing with respect to a passing of property of a deceased person are no longer a lien against the property ten years from the date of death of the decedent owner, except to the extent taxes are attributable to remainder or deferred interests and are deferred in accordance with the provisions of this chapter.

2. Notice of the lien is not required to be recorded. The rights of the state under the lien have priority over all subsequent mortgages, purchases, or judgment creditors; and a conveyance after the decedent's death of the property subject to a lien does not discharge the property except as otherwise provided in this chapter. However, if additional tax is determined to be owing under this chapter or chapter 451 after the lien has been released under paragraph "a" or "b", the lien does not have priority over subsequent mortgages, purchases, or judgment creditors unless notice of the lien is recorded in the office of the recorder of

the county where the estate is probated, or where the property is located if the estate has not been administered. The department of revenue and finance may release the lien by filing in the office of the clerk of the court in the county where the property is located, the decedent owner died, or the estate is pending or was administered, one of the following:

- a. A receipt in full payment of the tax.
- b. A certificate of nonliability for the tax as to all property reported in the estate.
- c. A release or waiver of the lien as to all or any part of the property reported in the estate, which shall release the lien as to the property designated in the release or waiver.

3. The sale, exchange, mortgage, or pledge of property by the personal representative pursuant to a testamentary direction or power, pursuant to section 633.387, or under order of court, divests the property from the lien of the tax. The proceeds from that sale, exchange, mortgage, or pledge shall be held by the personal representative subject to the same priorities for the payment of the tax as existed with respect to the property before the transaction, and the personal representative is personally liable for payment of the tax to the extent of the proceeds.

95 Acts, ch 63, §1
Subsection 1 amended

450.12 Liabilities deductible.

1. Subject to the limitations in subsections 2 and 3, there shall be deducted from the gross value of the estate only the liabilities defined as follows:

a. The debts owing by the decedent at the time of death, the local and state taxes accrued before the decedent's death, the federal estate tax and federal taxes owing by the decedent, a reasonable sum for funeral expenses, the allowance for surviving spouse and minor children granted by the probate court or its judge, court costs, and any other administration expenses allowable pursuant to section 2053 of the Internal Revenue Code.

b. A liability shall not be deducted unless the personal representative or other person filing the inheritance tax return as provided in section 450.22 certifies that it has been paid or, if not paid, the director of revenue and finance is satisfied that it will be paid. If the amount of liabilities deductible under this section exceeds the amount of property subject to the payment of the liabilities, the excess shall be deducted from other property included in the gross estate on a prorated basis that the gross value of each item of other property bears to the total gross value

of all the other property. Subject to the previous provision, a liability is deductible whether or not the liability is legally enforceable against the decedent's estate.

2. If the decedent's gross estate includes property with a situs outside of Iowa, the liabilities deductible under subsection 1 shall be prorated on the basis that the gross value of property with a situs in Iowa bears to the total gross estate. Only the Iowa portion of the liabilities shall be deductible in computing the tax imposed by this chapter. However, a liability secured by a lien on property shall be allocated to the state where the property has a situs and shall not be prorated except to the extent the liability exceeds the value of the property.

3. If a liability under subsection 1 is secured by property, or a portion of property, not included in the decedent's gross estate, only that portion of the liability attributable to property or a portion of property included in the decedent's gross estate is deductible in computing the tax imposed by this chapter.

95 Acts, ch 63, §2
Subsection 1, paragraph a amended

CHAPTER 452A

MOTOR FUEL AND SPECIAL FUEL TAXES

Licenses and permits issued prior to January 1, 1996,
except those issued under division III, canceled as of that date;
95 Acts, ch 155, §44

DIVISION I

MOTOR FUEL AND SPECIAL FUEL TAX

Licenses and permits issued prior to January 1, 1996,
canceled as of that date; 95 Acts, ch 155, §44

452A.1 Short title.

This division, plus applicable provisions of division IV of this chapter, shall be known and may be cited as the "*Motor Fuel and Special Fuel Tax Law*".

95 Acts, ch 155, §8
1995 amendments effective January 1, 1996; 95 Acts, ch 155, §44
Section amended

452A.2 Definitions.

As employed in this division:

1. "*Aviation gasoline*" means any gasoline which is capable of being used for propelling aircraft, which is invoiced as aviation gasoline or is received, sold, stored, or withdrawn from storage by any person for the purpose of propelling aircraft. Motor fuel capable of being used for propelling motor vehicles is not aviation gasoline.

2. "*Blender*" means a person who owns and blends alcohol with gasoline to produce ethanol blended gasoline and blends the product at a non-terminal location. The blender is not restricted to blending alcohol with gasoline. Products blended

with other than grain alcohol are treated and taxed as gasoline. "*Blender*" also means a person blending two or more special fuel products at a nonterminal location where the tax has not been paid on all of the products blended. The blend is taxed as a special fuel.

3. "*Common carrier*" or "*contract carrier*" means a person involved in the movement of motor fuel or special fuel from the terminal or movement of the motor fuel or special fuel imported into this state, who is not an owner of the motor fuel or special fuel.

4. "*Dealer*" means a person, other than a distributor, who engages in the business of selling or distributing motor fuel or special fuel to the end user in this state.

5. "*Department*" means the department of revenue and finance.

6. "*Director*" means the director of revenue and finance.

7. "*Distributor*" means a person who acquires tax paid motor fuel or special fuel from a supplier, restrictive supplier or importer, or another distributor for subsequent sale at wholesale and distribution by tank cars or tank trucks or both. The department may require that the distributor be registered to have terminal purchase rights.

8. "*Eligible purchaser*" means a distributor of motor fuel or special fuel or an end user of special fuel

who has purchased a minimum of two hundred forty thousand gallons of special fuel each year in the preceding two years. Eligible purchasers who elect to make delayed payments to a licensed supplier shall use electronic funds transfer. Additional requirements for qualifying as an eligible purchaser shall be established by rule.

9. "*Ethanol blended gasoline*" means motor fuel containing at least ten percent alcohol distilled from cereal grains.

10. "*Export*" means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin in this state.

11. "*Exporter*" means a person or other entity who acquires fuel in this state exclusively for export to another state.

12. "*Import*" means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin outside this state.

13. "*Importer*" means a person who imports motor fuel or undyed special fuel in bulk or transport load into the state by truck, rail, or barge.

14. "*Licensed compressed natural gas and liquefied petroleum gas dealer*" means a person in the business of handling untaxed compressed natural gas or liquefied petroleum gas who delivers any part of the fuel into a fuel supply tank of any motor vehicle.

15. "*Licensed compressed natural gas and liquefied petroleum gas user*" means a person licensed by the department who dispenses compressed natural gas or liquefied petroleum gas, upon which the special tax has not been previously paid, for highway use from fuel sources owned and controlled by the person into the fuel supply tank of a motor vehicle, or commercial vehicle owned or controlled by the person.

16. "*Licensee*" means a person holding an unanceled supplier's, restrictive supplier's, importer's, exporter's, dealer's, user's, or blender's license issued by the department under this division or any prior motor fuel tax law or any other person who possesses fuel for which the tax has not been paid.

17. "*Motor fuel*" means both of the following:

a. All products commonly or commercially known or sold as gasoline (including casinghead and absorption or natural gasoline) regardless of their classifications or uses.

b. Any liquid advertised, offered for sale, sold for use as, or commonly or commercially used as a fuel for propelling motor vehicles which, when subjected to distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society of Testing Materials Designation D-86), shows not less than ten per centum distilled (recovered) below three hundred forty-seven degrees Fahrenheit (one hundred seventy-five degrees Centigrade) and not less than ninety-five per centum distilled (recovered) below four hundred sixty-four degrees Fahrenheit (two hundred forty degrees Centigrade).

"*Motor fuel*" does not include special fuel, and does not include liquefied gases which would not exist as liquids at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds

per square inch absolute, or naphthas and solvents unless the liquefied gases or naphthas and solvents are used as a component in the manufacture, compounding, or blending of a liquid within paragraph "b", in which event the resulting product shall be deemed to be motor fuel.

18. "*Naphthas and solvents*" shall mean and include those liquids which come within the distillation specifications for motor fuel set out under subsection 17, paragraph "b", but which are designed and sold for exclusive use other than as a fuel for propelling motor vehicles.

19. "*Regional transit system*" means regional transit system as defined in section 452A.57, subsection 11.

20. "*Restrictive supplier*" means a person who imports motor fuel or undyed special fuel into this state in tank wagons or in small tanks not otherwise licensed as an importer.

21. "*Special fuel*" means fuel oils and all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles or turbine-powered aircraft, and includes any substance used for that purpose, except that it does not include motor fuel.

22. "*Supplier*" means a person who acquires motor fuel or special fuel by pipeline or marine vessel from a state, territory, or possession of the United States, or from a foreign country for storage at and distribution from a terminal and who is registered under 26 U.S.C. § 4101 for tax-free transactions in gasoline, a person who produces in this state or acquires by truck, railcar, or barge for storage at and distribution from a terminal, alcohol or alcohol derivative substances, or a person who produces, manufactures, or refines motor fuel or special fuel in this state. "*Supplier*" includes a person who does not meet the jurisdictional connection to this state but voluntarily agrees to act as a supplier for purposes of collecting and reporting the motor fuel or special fuel tax. "*Supplier*" does not include a retail dealer or wholesaler who merely blends alcohol with gasoline before the sale or distribution of the product or a terminal operator who merely handles, in a terminal, motor fuel or special fuel consigned to the terminal operator.

23. "*Terminal*" means a motor fuel or special fuel storage and distribution facility that is supplied by a pipeline or a marine vessel and from which the fuel may be removed at a rack. "*Terminal*" does not include a facility at which motor fuel or special fuel blend stocks and additives are used in the manufacture of products other than motor fuel or special fuel and from which no motor fuel or special fuel is removed.

24. "*Terminal operator*" means the person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If co-venturers own a terminal, "*terminal operator*" means the person who is appointed to exercise the responsibility for, or physical control over, and operation of the terminal.

25. "Urban transit system" means Iowa urban transit system as defined in section 452A.57, subsection 6.

26. "Use" means the receipt, delivery, or placing of liquefied petroleum gas by a licensed liquefied petroleum gas user into a fuel supply tank of a motor vehicle while the vehicle is in the state, except that with respect to natural gas used as a special fuel, "use" means the receipt, delivery, or placing of the natural gas into equipment for compressing the gas for subsequent delivery into the fuel supply tank of a motor vehicle.

27. "Withdrawn from terminal" means physical movement from a supplier to a distributor or eligible end user and includes an importer going out of state and obtaining fuel from a terminal and bringing the fuel into the state, and a restrictive supplier bringing fuel into the state even though not purchased directly from a terminal.

95 Acts, ch 155, §9-13
 Additional definitions, see §452A.57
 1995 amendments effective January 1, 1996; 95 Acts, ch 155, §44
 NEW subsections 2, 3, and 8 and former subsections 2-5 and 6 renumbered as 4-7 and 9
 Subsections 4 and 7 stricken and rewritten
 NEW subsections 10-15 and former subsections 7 and 8 renumbered as 16 and 17
 Subsections 16 and 17 amended
 Former subsection 9 stricken and former subsections 10 and 11 renumbered as 18 and 19
 NEW subsections 20-24 and former subsection 12 renumbered as 25
 NEW subsections 26 and 27

452A.3 Levy of excise tax.

1. For the privilege of operating motor vehicles in this state, an excise tax of twenty cents per gallon is imposed upon the use of all motor fuel used for any purpose except aviation gasoline and except motor fuel containing at least ten percent alcohol distilled from cereal grains grown in the United States for the period ending June 30, 2000, and except as otherwise provided in this division. For the privilege of operating aircraft in this state an excise tax of eight cents per gallon is imposed on the use of all aviation gasoline.

2. For the privilege of operating motor vehicles in this state, an excise tax of nineteen cents per gallon until June 30, 2000, is imposed upon the use of motor fuel containing at least ten percent alcohol distilled from cereal grains grown in the United States and used for any purpose except as otherwise provided in this division.

3. For the privilege of operating motor vehicles or aircraft in this state, there is imposed an excise tax on the use of special fuel in a motor vehicle or aircraft. The tax rate on special fuel for diesel engines of motor vehicles is twenty-two and one-half cents per gallon. The rate of tax on special fuel for aircraft is three cents per gallon. On all other special fuel the per gallon rate is the same as the motor fuel tax. Indelible dye meeting United States environmental protection agency and internal revenue service regulations must be added to fuel before or upon withdrawal at a terminal or refinery rack for that fuel to be exempt from tax and may be used only for an exempt purpose.

4. For compressed natural gas used as a special fuel, the rate of tax that is equivalent to the motor fuel tax shall be sixteen cents per hundred cubic feet adjusted to a base temperature of sixty degrees Fahrenheit and a pressure of fourteen and seventy-three hundredths pounds per square inch absolute.

5. The tax shall be paid by the following:

a. The supplier, upon the invoiced gross gallonage of all motor fuel or undyed special fuel withdrawn from a terminal for delivery in this state.

b. The person who owns or causes the fuel to be brought into the state by a restrictive supplier or importer, upon the invoiced gross gallonage of motor fuel or undyed special fuel imported.

c. The blender on total invoiced gross gallonage of alcohol or other product sold to be blended with gasoline or special fuel.

d. Any other person who possesses taxable fuel upon which the tax has not been paid to a licensee.

However, the tax shall not be imposed or collected under this division with respect to motor fuel or special fuel sold for export or exported from this state to any other state, territory, or foreign country.

6. Thereafter, except as otherwise provided in this division, the per gallon amount of the tax shall be added to the selling price of every gallon of such motor fuel or undyed special fuel sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax.

95 Acts, ch 155, §14
 See §452A.81
 1995 amendment effective January 1, 1996; 95 Acts, ch 155, §44
 Section stricken and rewritten

452A.4 Supplier's, restrictive supplier's, importer's, exporter's, dealer's, and user's license.

1. It shall be unlawful for any person to sell motor fuel or undyed special fuel within this state or to otherwise act as a supplier, restrictive supplier, importer, exporter, dealer, or user unless the person holds an unanceled license issued by the department. To procure a license, a supplier, restrictive supplier, importer, exporter, dealer, or user shall file with the department an application signed under penalty for false certificate setting forth and complying with all of the following:

a. The name under which the licensee will transact business in this state.

b. The location, with street number address, of the principal office or place of business of the licensee within this state.

c. The name and complete residence address of the owner or the names and addresses of the partners, if the licensee is a partnership, or the names and addresses of the principal officers, if the licensee is a corporation or association.

d. A dealer's or user's license shall be required for each separate place of business or location where compressed natural gas or liquefied petroleum gas is delivered or placed into the fuel supply tank of a motor vehicle.

e. An applicant for an exporter's license shall provide verification as required by the department

that the applicant has the appropriate license valid in the state or states into which the motor fuel or undyed special fuel will be exported.

2. *a.* The department may deny the issuance of a license to an applicant who is substantially delinquent in the payment of a tax due, or the interest or penalty on the tax, administered by the department. If the applicant is a partnership, a license may be denied if a partner owes any delinquent tax, interest, or penalty. If the applicant is a corporation, a license may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, interest, or penalty of the applicant corporation.

b. The department may deny the issuance of a license if an application for a license to transact business as a supplier, restrictive supplier, importer, exporter, dealer, or user in this state is filed by a person whose license or registration has been canceled for cause at any time under the provisions of this chapter or any prior motor fuel tax law, if the department has reason to believe that the application is not filed in good faith, or if the application is filed by some person as a subterfuge for the real person in interest whose license or registration has been canceled for cause under the provisions of this chapter or any prior motor fuel tax law. The applicant shall be given fifteen days' notice in writing of the date of the hearing and shall have the right to appear in person or by counsel and present testimony.

3. *a.* The application in proper form having been accepted for filing, and the other conditions and requirements of this section and division IV having been complied with, the department shall issue to the applicant a license to transact business as a supplier, restrictive supplier, importer, exporter, dealer, or user in this state. The license shall remain in full force and effect until canceled as provided in this chapter.

b. The license shall not be assignable and shall be valid only for the licensee in whose name it is issued.

c. The department shall keep and file all applications and bonds and a record of all licenses.

95 Acts, ch 155, §15
1995 amendments effective January 1, 1996; licenses issued prior to January 1, 1996, canceled as of that date; 95 Acts, ch 155, §44
Section amended

452A.5 Distribution allowance.

A supplier shall retain a distribution allowance of not more than one and six-tenths percent of all gallons of motor fuel and a distribution allowance of not more than seven-tenths percent of all gallons of undyed special fuel removed from the terminal during the reporting period for purposes of tax computation under section 452A.8.

The distribution allowance shall be prorated between the supplier and the distributor as follows:

1. Motor fuel: four-tenths percent retained by the supplier, one and two-tenths percent to the distributor.

2. Undyed special fuel: thirty-five hundredths percent retained by the supplier, thirty-five hun-

dredths percent to the distributor or dealer purchasing directly from a supplier. Gallons exported outside of the state shall not be included in the calculation of the distribution.

95 Acts, ch 155, §16
1995 amendment effective January 1, 1996; 95 Acts, ch 155, §44
Section stricken and rewritten

452A.6 Ethanol blended gasoline blender's license.

A person other than a supplier, restrictive supplier, or importer licensed under this division, who blends gasoline with alcohol distilled from cereal grains so that the blend contains at least ten percent alcohol distilled from cereal grains, shall obtain a blender's license. The license shall be obtained by following the procedure under section 452A.4 and the license is subject to the same restrictions as contained in that section. A blender shall maintain records as required by section 452A.10 as to motor fuel, alcohol, and ethanol blended gasoline.

95 Acts, ch 155, §17
1995 amendments effective January 1, 1996; licenses issued prior to January 1, 1996, canceled as of that date; 95 Acts, ch 155, §44
Section amended

452A.7 Foreign suppliers.

The director, upon application, may authorize the collection and reporting of the tax by any supplier not having jurisdictional connections with this state. A foreign supplier shall be issued a license to collect and report the tax and shall be subject to the same regulations and requirements as suppliers having a jurisdictional connection with the state, or other regulations and agreements as prescribed by the director.

95 Acts, ch 155, §18
Effective January 1, 1996; 95 Acts, ch 155, §44
NEW section

452A.8 Tax reports — computation and payment of tax — credits.

1. For the purpose of determining the amount of the supplier's, restrictive supplier's, or importer's tax liability, a supplier or restrictive supplier shall file, not later than the last day of the month following the month in which this division becomes effective and not later than the last day of each calendar month thereafter, and an importer shall file a report semi-monthly with the department, signed under penalty for false certification. For an importer for the reporting period from the first day of the month through the fifteenth of the month, the report is due on the last day of the month. For an importer for the reporting period from the sixteenth of the month through the last day of the month, the report is due on the fifteenth day of the following month. The reports shall include the following:

a. A statement of the number of invoiced gallons of motor fuel and undyed special fuel withdrawn from the terminal by the licensee within this state during the preceding calendar month in such detail as determined by the department. This includes on-site blending reports at the terminal.

b. For information purposes only, a supplier, restrictive supplier, or importer shall show the number of invoiced gallons of dyed special fuel withdrawn from the terminal.

c. A statement showing the deductions authorized in this division in such detail and with such supporting evidence as required by the department.

d. Any other information the department may require for the enforcement of this chapter.

2. At the time of filing of a report, a supplier, restrictive supplier, or importer shall pay to the department the full amount of the fuel tax due for the preceding calendar month computed as follows:

a. From the total number of invoiced gallons of motor fuel or undyed special fuel withdrawn from the terminal by the licensee within the state during the preceding calendar month the following deductions shall be made:

(1) The gallonage of motor fuel or undyed special fuel withdrawn from a terminal by a licensee and exported outside Iowa.

(2) For suppliers only, the one and six-tenths percent of the number of gallons of motor fuel or seven-tenths percent of the number of gallons of undyed special fuel of the invoiced gallons of motor fuel or undyed special fuel withdrawn from a terminal within this state during the preceding calendar month.

b. The number of invoiced gallons remaining after the deductions in paragraph "a" shall be multiplied by the per gallon fuel tax rate.

c. The tax due under paragraph "b" shall be the amount of fuel tax due from the supplier, restrictive supplier, or importer for the preceding reporting period. The director may require by rule that the payment of taxes by suppliers, restrictive suppliers, and importers be made by electronic funds transfer. The director may allow a tax float by rule where the eligible purchaser is not required to pay the tax to the supplier until one business day prior to the date the tax is due. Any credit calculated by the supplier, restrictive supplier, or importer may be applied against the amount due. A licensed supplier who is unable to recover the tax from an eligible purchaser is not liable for the tax, upon proper documentation, and may credit the amount of unpaid tax against a later remittance of tax. Under this provision, a supplier does not qualify for a credit if the purchaser did not elect to use the eligible purchaser status, or otherwise does not qualify to be an eligible purchaser. To qualify for the credit, the supplier must notify the department of the uncollectible account no later than ten calendar days after the due date for payment of the tax. If a supplier sells additional motor fuel or undyed special fuel to a delinquent eligible purchaser after notifying the department that the supplier has an uncollectible debt with that eligible purchaser, the limited liability provision does not apply to the additional fuel. The supplier is liable for tax collected from the purchaser.

d. The director may require by rule that reports be filed by electronic transmission.

e. The tax for compressed natural gas and liquefied petroleum gas delivered by a licensed compressed natural gas or liquefied petroleum gas dealer for use in this state shall attach at the time of the delivery and shall be collected by the dealer from the consumer and paid to the department as provided in this chapter. The tax, with respect to compressed natural gas and liquefied petroleum gas acquired by a consumer in any manner other than by delivery by a licensed compressed natural gas or liquefied petroleum gas dealer into a fuel supply tank of a motor vehicle, attaches at the time of the use of the fuel and shall be paid over to the department by the consumer as provided in this chapter.

The department shall adopt rules governing the dispensing of compressed natural gas and liquefied petroleum gas by licensed dealers and licensed users. For purposes of this paragraph, "dealer" and "user" mean a licensed compressed natural gas or liquefied petroleum gas dealer or user and "fuel" means compressed natural gas or liquefied petroleum gas. The department shall require that all pumps located at dealer locations and user locations through which liquefied petroleum gas can be dispensed, metered, inspected, tested for accuracy, and sealed and licensed by the state department of agriculture and land stewardship, and that fuel delivered into the fuel supply tank of any motor vehicle, shall be dispensed only through tested metered pumps and may be sold without temperature correction or corrected to a temperature of sixty degrees. If the metered gallonage is to be temperature-corrected, only a temperature-compensated meter shall be used. Natural gas used as fuel shall be delivered into compressing equipment through sealed meters certified for accuracy by the department of agriculture and land stewardship.

All gallonage which is not for highway use, dispensed through metered pumps as licensed under this section on which fuel tax is not collected, must be substantiated by exemption certificates as provided by the department or by valid exemption certificates provided by the dealers, signed by the purchaser, and retained by the dealer. A "valid exemption certificate provided by a dealer" is an exemption certificate which is in the form prescribed by the director to assist a dealer to properly account for fuel dispensed for which tax is not collected and which is complete and correct according to the requirements of the director.

For the privilege of purchasing liquefied petroleum gas, dispensed through licensed metered pumps, on a basis exempt from the tax, the purchaser shall sign exemption certificates for the gallonage claimed which is not for highway use.

The department shall disallow all sales of gallonage which is not for highway use unless proof is established by the certificate. Exemption certificates shall be retained by the dealer for a period of three years.

(1) For the purpose of determining the amount of liability for fuel tax, each dealer and each user shall

file with the department not later than the last day of the month following the month in which this division becomes effective and not later than the last day of each calendar month thereafter a monthly tax return certified under penalties for false certification. The return shall show, with reference to each location at which fuel is delivered or placed by the dealer or user into a fuel supply tank of any motor vehicle during the next preceding calendar month, information as required by the department.

(2) The amount of tax due shall be computed by multiplying the appropriate tax rate per gallon by the number of gallons of fuel delivered or placed by the dealer or user into supply tanks of motor vehicles.

(3) The return shall be accompanied by remittance in the amount of the tax due for the month in which the fuel was placed into the supply tanks of motor vehicles.

3. For the purpose of determining the amount of the tax liability on alcohol blended to produce ethanol blended gasoline, each licensed blender shall, not later than the last day of each month following the month in which the blending is done, file with the department a monthly report, signed under penalty for false certificate, containing information required by rules adopted by the director.

4. A person who possesses fuel or uses fuel in a motor vehicle upon which no tax has been paid by a licensee in this state is subject to reporting and paying the applicable tax.

95 Acts, ch 155, §19
1995 amendment effective January 1, 1996; 95 Acts, ch 155, §44
Section stricken and rewritten

452A.9 Report from persons not licensed as suppliers, restrictive suppliers, or importers.

Every person other than a licensed supplier, restrictive supplier, or importer, who purchases, brings into this state, or otherwise acquires within this state motor fuel or undyed special fuel, not otherwise exempted, which the person has knowingly not paid or incurred liability to pay either to a licensee or to a dealer the motor fuel or special fuel tax, shall be subject to the provisions of this division that apply to suppliers, restrictive suppliers, and importers of motor fuel or undyed special fuel and shall make the same reports and tax payments and be subject to the same penalties for delinquent reporting or nonreporting or delinquent payment or nonpayment as apply to suppliers, restrictive suppliers, and importers.

95 Acts, ch 155, §20
1995 amendments effective January 1, 1996; 95 Acts, ch 155, §44
Section amended

452A.10 Required records.

A motor fuel or special fuel supplier, restrictive supplier, importer, exporter, blender, dealer, user, common carrier, contract carrier, or terminal shall maintain, for a period of three years, records of all transactions by which the supplier, restrictive supplier, or importer withdraws from a terminal within this state or imports into this state motor fuel or

undyed special fuel together with invoices, bills of lading, and other pertinent records and papers as required by the department.

If in the normal conduct of a supplier's, restrictive supplier's, importer's, exporter's, blender's, dealer's, user's, common carrier's, contract carrier's, or terminal's business the records are maintained and kept at an office outside this state, the records shall be made available for audit and examination by the department at the office outside this state, but the audit and examination shall be without expense to this state.

Each distributor handling motor fuel or special fuel in this state shall maintain for a period of three years records of all motor fuel or undyed special fuel purchased or otherwise acquired by the distributor, together with delivery tickets, invoices, and bills of lading, and any other records required by the department.

The department, after an audit and examination of records required to be maintained under this section, may authorize their disposal upon the written request of the supplier, restrictive supplier, importer, exporter, blender, dealer, user, carrier, terminal, or distributor.

95 Acts, ch 155, §21
1995 amendments effective January 1, 1996; 95 Acts, ch 155, §44
Section amended

452A.12 Loading and delivery evidence on transportation equipment.

1. A serially numbered manifest shall be carried on every vehicle, except small tank wagons, while in use in transportation service, on which shall be entered the following information as to the cargo of motor fuel or special fuel being moved in the vehicle: The date and place of loading, the place to be unloaded, the person for whom it is to be delivered, the nature and kind of product, the amount of product, and other information required by the department. The manifest for small tank wagons shall be retained at the home office. The manifest covering each load transported, upon consummation of the delivery, shall be completed by showing the date and place of actual delivery and the person to whom actually delivered and shall be kept as a permanent record for a period of three years. However, the record of the manifest of past cargoes need not be carried on the conveyance but shall be preserved by the carrier for inspection by the department. A carrier subject to this subsection when distributing for a licensee may with the approval of the department substitute the loading and delivery evidence required in subsection 2 for the manifest.

2. A person while transporting motor fuel or undyed special fuel from a refinery or marine or pipeline terminal in this state or from a point outside this state over the highways of this state in service other than that under subsection 1 shall carry in the vehicle a loading invoice showing the name and address of the seller or consignor, the date and place of loading, and the kind and quantity of motor fuel or special fuel loaded, together with invoices showing the kind

and quantity of each delivery and the name and address of each purchaser or consignee.

95 Acts, ch 155, §22
1995 amendments effective January 1, 1996; 95 Acts, ch 155, §44
Section amended

452A.13 Evidence produced upon request.
Repealed effective January 1, 1996, by 95 Acts, ch 155, § 43, 44.

452A.15 Transportation reports — refinery and pipeline and marine terminal reports.

1. Every railroad and common carrier or contract carrier transporting motor fuel or special fuel either in interstate or intrastate commerce within this state and every person transporting motor fuel or special fuel by whatever manner into this state shall, subject to penalties for false certificate, report to the department all deliveries of motor fuel or special fuel to points within this state other than refineries or marine or pipeline terminals. If any supplier, restrictive supplier, importer, or distributor is also engaged in the transportation of motor fuel or special fuel for others, the supplier, restrictive supplier, importer, or distributor shall make the same reports as required of common carriers and contract carriers.

The report shall cover monthly periods and shall show as to each delivery:

- a. The name and address of the person to whom delivery was actually made.
- b. The name and address of the originally named consignee, if delivered to any other than the originally named consignee.
- c. The point of origin, the point of delivery, and the date of delivery.
- d. The number and initials of each tank car and the number of gallons contained in the tank car, if shipped by rail.
- e. The name of the boat, barge, or vessel, and the number of gallons contained in the boat, barge, or vessel, if shipped by water.
- f. The registration number of each tank truck and the number of gallons contained in the tank truck, if transported by motor truck.
- g. The manner, if delivered by other means, in which the delivery is made.
- h. Additional information relative to shipments of motor fuel or special fuel as the department may require.

If a person required under this section to file transportation reports is a licensee under this division and if the information required in the transportation report is contained in any other report rendered by the person under this division, a separate transportation report of that information shall not be required.

2. A person operating storage facilities at a refinery or at a terminal in this state shall make a monthly accounting to the department of all motor fuel, alcohol, and undyed special fuel withdrawn from the refinery and all motor fuel, alcohol, and undyed special fuel delivered into, withdrawn from, and on hand in the refinery or terminal.

3. The reports required in this section shall be for information purposes only and the department may in its discretion waive the filing of any of these reports not necessary for proper administration of this division. The reports required in this section shall be certified under penalty for false certificate and filed with the department within the time allowed for filing of suppliers' and restrictive suppliers' reports of motor fuel or special fuel withdrawn from a terminal within this state or imported into this state.

95 Acts, ch 155, §23
1995 amendments effective January 1, 1996; 95 Acts, ch 155, §44
Section amended

452A.16 Credit or refund to licensee — fuel used other than in watercraft, aircraft, or motor vehicles — casualty losses. Repealed effective January 1, 1996, by 95 Acts, ch 155, § 43, 44.

452A.17 Refunds.

1. A person who uses motor fuel or undyed special fuel for any of the nontaxable purposes listed in this subsection, and who has paid the motor fuel or special fuel tax either directly to the department or by having the tax added to the price of the fuel, and who has a refund permit, upon presentation to and approval by the department of a claim for refund, shall be reimbursed and repaid the amount of the tax which the claimant has paid on the gallonage so used, except that the amount of a refund payable under this division may be applied by the department against any tax liability outstanding on the books of the department against the claimant.

a. The refund is allowable for motor fuel or undyed special fuel sold to or used for the following:

(1) The United States or any agency or instrumentality of the United States or where collection of the tax would be prohibited by the Constitution of the United States or the laws of the United States or by the Constitution of the State of Iowa.

(2) An Iowa urban transit system which is used for a purpose specified in section 452A.57, subsection 6.

(3) A regional transit system, the state, any of its agencies, or any political subdivision of the state which is used for a purpose specified in section 452A.57, subsection 11, or for public purposes, including fuel sold for the transportation of pupils of approved public and nonpublic schools by a carrier who contracts with the public school under section 285.5.

(4) Fuel used in unlicensed vehicles, stationary engines, and implements used in agricultural production.

(5) Fuel used for producing denatured alcohol.

(6) Fuel used for idle time, power takeoffs, reefer units, pumping credits, and transport diversions, fuel lost through casualty, exports by eligible purchasers, and blending errors for special fuel. The department shall adopt rules setting forth specific requirements relating to refunds for idle time, power takeoffs,

reefer units, pumping credits, and transport diversions, fuel lost through casualty, and blending errors for special fuel.

(7) A bona fide commercial fisher, licensed and operating under an owner's certificate for commercial fishing gear issued pursuant to section 482.4.

(8) For motor fuel or special fuel placed in motor vehicles and used, other than on a public highway, in the extraction and processing of natural deposits, without regard to whether the motor vehicle was registered under section 321.18. An applicant under this subparagraph shall maintain adequate records for a period of three years beyond the date of the claim.

b. A claim for refund is subject to the following conditions:

(1) The claim shall be on a form prescribed by the department and be certified by the claimant under penalty for false certificate.

(2) The claim shall include proof as prescribed by the department showing the purchase of the motor fuel or undyed special fuel on which a refund is claimed.

(3) An invoice shall not be acceptable in support of a claim for refund unless it is a separate serially numbered invoice covering no more than one purchase of motor fuel or undyed special fuel, prepared by the seller on a form approved by the department which will prevent erasure or alteration and unless it is legibly written with no corrections or erasures and shows the date of sale, the name and address of the seller and of the purchaser, the kind of fuel, the gallonage in figures, the per gallon price of the motor fuel or undyed special fuel, the total purchase price including the Iowa motor fuel or undyed special fuel tax and that the total purchase price including tax has been paid. However, with respect to refund invoices made on a billing machine, the department may waive any of the requirements of this subparagraph.

(4) The claim shall state the gallonage of motor fuel or undyed special fuel that was used or will be used by the claimant other than in watercraft or aircraft or to propel motor vehicles, the manner in which the motor fuel or undyed special fuel was used or will be used, and the equipment in which it was used or will be used.

(5) The claim shall state whether the claimant used fuel for watercraft or aircraft or to propel motor vehicles from the same tanks or receptacles in which the claimant kept the motor fuel or undyed special fuel on which the refund is claimed.

(6) If an original invoice is lost or destroyed the department may in its discretion accept a copy identified and certified by the seller as being a true copy of the original.

(7) Claim shall be made by and the amount of the refund shall be paid to the person who purchased the motor fuel or undyed special fuel as shown in the supporting invoice unless that person designates another person as an agent for purposes of filing and receiving the refund for idle time, power takeoff,

reefer units, pumping credits, and transport diversions.

(8) In order to verify the validity of a claim for refund the department shall have the right to require the claimant to furnish such additional proof of validity as the department may determine and to examine the books and records of the claimant. Failure of a claimant to furnish the claimant's books and records for examination shall constitute a waiver of all rights to refund related to the transaction in question.

2. In lieu of the refund provided in this section, a person may receive an income tax credit as provided in chapter 422, division IX, but only as to motor fuel or undyed special fuel not used in motor vehicles, aircraft, or watercraft.

3. a. A claim for refund shall not be allowed unless the claimant has accumulated sixty dollars in credits for one calendar year. A claim for refund may be filed any time the sixty dollar minimum has been met within the calendar year. If the sixty dollar minimum has not been met in the calendar year, the credit shall be claimed on the claimant's income tax return unless the taxpayer is not required to file an income tax return in which case a refund shall be allowed. Once the sixty dollar minimum has been met, the claim for refund must be filed within one year.

b. A refund shall be paid with respect to any motor fuel or undyed special fuel taken out of this state in supply tanks of watercraft, aircraft, or motor vehicles.

c. A refund shall not be paid with respect to motor fuel or special fuel used in the performance of a contract which is paid out of state funds unless the contract for the work contains a certificate made under penalty for false certificate that the estimate, bid, or price to be paid for the work does not include any amount representing motor fuel or special fuel tax subject to refund.

95 Acts, ch 155, §24

1995 amendments effective January 1, 1996; 95 Acts, ch 155, §44
Section amended

452A.18 Refund permit.

A person shall not claim a refund under section 452A.17 or section 452A.21 until the person has obtained a refund permit from the department. A special permit shall be obtained by an applicant claiming a refund under this chapter for motor fuel used to blend ethanol blended gasoline. Application for a refund permit shall be made to the department, shall be certified by the applicant under penalty for false certificate, and shall contain among other things, the name, address, and occupation of the applicant, the nature of the applicant's business, and a sufficient description for identification of the machines and equipment in which the motor fuel or undyed special fuel is to be used. Each permit shall bear a separate number and each claim for refund shall bear the number of the permit under which it is made. The department shall keep a permanent rec-

ord of all permits issued and a cumulative record of the amount of refund claimed and paid under each. A refund permit shall continue in effect until it is revoked or becomes invalid.

95 Acts, ch 155, §25
1995 amendments effective January 1, 1996; permits issued prior to January 1, 1996, canceled as of that date; 95 Acts, ch 155, §44
Section amended

452A.20 Posting price and discounts. Repealed effective January 1, 1996, by 95 Acts, ch 155, § 43, 44.

452A.21 Refund — credit.

Persons not licensed under this division who blend motor fuel and alcohol to produce ethanol blended gasoline may file for a refund for the difference between taxes paid on the motor fuel purchased to produce ethanol blended gasoline and the tax due on the ethanol blended gasoline blended. If, during any month, a person licensed under this division uses tax paid motor fuel to blend ethanol blended gasoline and the refund otherwise due under this section is greater than the licensee's total tax liability for that month, the licensee is entitled to a credit. The claim for credit shall be filed as part of the report required by section 452A.8.

In order to obtain the refund established by this section, the person shall do all of the following:

1. Obtain a blender's permit as provided in section 452A.18.
2. File a refund claim containing the information as required by the department and certified by the claimant under penalty for false certificate.
3. Retain invoices meeting the requirements of section 452A.17, subsection 1, paragraph "b", subparagraph (3), for the motor fuel purchased.
4. Retain invoices for the purchase of alcohol.

A refund or credit memorandum will not be issued unless the claim is filed within ninety days following the end of the month during which the ethanol blended gasoline was actually blended.

95 Acts, ch 155, §26
1995 amendments effective January 1, 1996; 95 Acts, ch 155, §44
Section amended

DIVISION II

SPECIAL FUEL TAX

452A.31 through 452A.38 Repealed effective January 1, 1996, by 95 Acts, ch 155, § 43, 44. See division I.

Licenses issued prior to January 1, 1996, canceled as of that date; 95 Acts, ch 155, §44

DIVISION III

MOTOR FUEL AND SPECIAL FUEL USE TAX
FOR INTERSTATE MOTOR VEHICLE OPERATIONS

452A.54 Fuel tax computation — refund — reporting and payment.

Fuel tax liability under this division shall be computed on the total number of gallons of each kind of

motor fuel and special fuel consumed in the operation in Iowa by commercial motor vehicles subject to this division at the same rate for each kind of fuel as would be applicable if taxed under division I of this chapter. A refund against the fuel tax liability so computed shall be allowed, on excess Iowa motor fuel purchased, in the amount of fuel tax paid at the prevailing rate per gallon set out under division I of this chapter on motor fuel and special fuel consumed by commercial motor vehicles, the operation of which is subject to this division.

Notwithstanding any provision of this chapter to the contrary, except as provided in this section, the holder of a permanent permit may make application to the state department of transportation for a refund, not later than the last day of the third month following the quarter in which the overpayment of Iowa fuel tax paid on excess purchases of motor fuel or special fuel was reported as provided in section 452A.8, and which application is supported by such proof as the state department of transportation may require. The state department of transportation shall refund Iowa fuel tax paid on motor fuel or special fuel purchased in excess of the amount consumed by such commercial motor vehicles in their operation on the highways of this state.

Application for a refund of fuel tax under this division must be made for each quarter in which the excess payment was reported, and will not be allowed unless the amount of fuel tax paid on the fuel purchased in this state, in excess of that consumed for highway operation in this state in the quarter applied for, is in an amount exceeding ten dollars. An application for a refund of excess Iowa fuel tax paid under this division which is filed for any period or in any manner other than herein set out shall not be allowed.

To determine the amount of fuel taxes due under this division and to prevent the evasion thereof, the state department of transportation shall require a quarterly report on forms prescribed by the state department of transportation. It shall be filed not later than the last day of the month following the quarter reported, and each quarter thereafter. These reports shall be required of all persons who have been issued a permit under this division and shall cover actual operation and fuel consumption in Iowa on the basis of the permit holder's average consumption of fuel in Iowa, determined by the total miles traveled and the total fuel purchased and consumed for highway use by the permittee's commercial motor vehicles in the permittee's entire operation in all states to establish an overall miles per gallon ratio, which ratio shall be used to compute the gallons used for the miles traveled in Iowa.

Subject to compliance with rules adopted by the department, annual reporting may be permitted in lieu of quarterly reporting. A licensee permitted to report annually shall maintain records in compliance with this chapter.

95 Acts, ch 155, §27
1995 amendments to unnumbered paragraph 1 effective January 1, 1996;
95 Acts, ch 155, §44
Unnumbered paragraph 1 amended

DIVISION IV

PROVISIONS COMMON TO TAXES IMPOSED
UNDER DIVISIONS I AND III**452A.57 Definitions.**

1. "Appropriate state agency" or "state agency" means the department of revenue and finance or the state department of transportation, whichever is responsible for control, maintenance, or supervision of the power, requirement, or duty referred to in the provision. The department of revenue and finance shall administer the provisions of division I of this chapter, and the state department of transportation shall administer the provisions of division III. The state department of transportation shall have enforcement authority for division I as agreed upon by the director of revenue and finance and the director of transportation.

2. "Carrier" means and includes any person who operates or causes to be operated any commercial motor vehicle on any public highway in this state.

3. "Commercial motor vehicle" means a passenger vehicle that has seats for more than nine passengers in addition to the driver, any road tractor, any truck tractor, or any truck having two or more axles which passenger vehicle, road tractor, truck tractor, or truck is propelled on the public highways by either motor fuel or special fuel. "Commercial motor vehicle" does not include a motor truck with a combined gross weight of less than twenty-six thousand pounds, operated as a part of an identifiable one-way fleet and which is leased for less than thirty days to a lessee for the purpose of moving property which is not owned by the lessor.

4. "Department of revenue and finance" includes the director of revenue and finance or the director's authorized representative.

5. "Fuel taxes" means the per gallon excise taxes imposed under division I of this chapter with respect to motor fuel and undyed special fuel.

6. An "Iowa urban transit system" is a system whereby motor buses are operated primarily upon the streets of cities for the transportation of passengers for an established fare and which accepts passengers who present themselves for transportation without discrimination up to the limit of the capacity of each motor bus. "Iowa urban transit system" also includes motor buses operated upon the streets of adjoining cities, whether interstate or intrastate, for the transportation of passengers without discrimination up to the limit of the capacity of the motor bus. Privately chartered bus services, motor carriers and interurban carriers subject to the jurisdiction of the state department of transportation, school bus services and taxicabs shall not be construed to be an urban transit system nor a part of any such system.

7. "Mobile machinery and equipment" means vehicles self-propelled by an internal combustion engine but not designed or used primarily for the transportation of persons or property on public highways and only incidentally operated or moved over a

highway including but not limited to corn shellers, truck-mounted feed grinders, roller mills, ditch digging apparatus, power shovels, drag lines, earth moving equipment and machinery, and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers and earth moving scrapers. However, "mobile machinery and equipment" does not include dump trucks or self-propelled vehicles originally designed for the transportation of persons or property on public highways and to which machinery, such as truck-mounted transit mixers, cranes, shovels, welders, air compressors, well-boring apparatus or lime spreaders, has been attached.

8. "Motor vehicle" shall mean and include all vehicles (except those operated on rails) which are propelled by internal combustion engines and are of such design as to permit their mobile use on public highways for transporting persons or property. A farm tractor while operated on a farm or for the purpose of hauling farm machinery, equipment or produce shall not be deemed to be a motor vehicle. "Motor vehicle" shall not include "mobile machinery and equipment" as defined in this section.

9. "Person" shall mean and include natural persons, partnerships, firms, associations, corporations, representatives appointed by any court and political subdivisions of this state and use of the singular shall include the plural.

10. "Public highways" shall mean and include any way or place available to the public for purposes of vehicular travel notwithstanding temporarily closed.

11. "Regional transit system" means a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor, except as agreed upon by the department. Each county board of supervisors within the region is responsible for determining the service and funding within its county. However, the administration and overhead support services for the overall regional transit system shall be consolidated into one existing or new agency to be mutually agreed upon by the participating members. Privately chartered bus services and uses other than providing services that are open and public on a shared ride basis shall not be construed to be a regional transit system.

95 Acts, ch 155, §28

See §452A.2

1995 amendments to subsections 1 and 5 effective January 1, 1996; 95 Acts, ch 155, §44

Subsections 1 and 5 amended

452A.59 Administrative rules.

The department of revenue and finance and the state department of transportation are authorized and empowered to adopt rules under chapter 17A, relating to the administration and enforcement of

this chapter as deemed necessary by the departments.

95 Acts, ch 155, §29
1995 amendments effective January 1, 1996; 95 Acts, ch 155, §44
Section amended

452A.60 Forms of report, refund claim, and records.

The department of revenue and finance or the state department of transportation shall prescribe and furnish all forms, as applicable, upon which reports and applications shall be made and claims for refund presented under this chapter and may prescribe forms of record to be kept by suppliers, restrictive suppliers, importers, exporters, blenders, common carriers, contract carriers, licensed compressed natural gas and liquefied petroleum gas dealers and users, terminal operators, and interstate commercial motor vehicle operators.

The department of revenue and finance or the state department of transportation may approve a form of record, other than a prescribed form, if the required information is presented in a reasonably accessible form which substantially complies with the prescribed form.

95 Acts, ch 155, §30
1995 amendments effective January 1, 1996; 95 Acts, ch 155, §44
Section amended

452A.62 Inspection of records.

The department of revenue and finance or the state department of transportation, whichever is applicable, is hereby given the authority within the time prescribed for keeping records to do the following:

1. To examine, during the usual business hours of the day, the records, books, papers, receipts, invoices, storage tanks, and any other equipment of any of the following:

a. A distributor, supplier, restrictive supplier, importer, exporter, blender, terminal operator, common carrier, or contract carrier, pertaining to motor fuel or undyed special fuel withdrawn from a terminal or brought into this state.

b. A licensed compressed natural gas or liquefied petroleum gas dealer, user, or person supplying compressed natural gas or liquefied petroleum gas to a licensed compressed natural gas or liquefied petroleum gas dealer or user.

c. An interstate operator of motor vehicles to verify the truth and accuracy of any statement, report, or return, or to ascertain whether or not the taxes imposed by this chapter have been paid.

d. Any person selling fuels that can be used for highway use.

2. To examine the records, books, papers, receipts, and invoices of any distributor, supplier, restrictive supplier, importer, exporter, terminal operator, licensed compressed natural gas or liquefied petroleum gas dealer or user, or any other person who possesses fuel upon which the tax has not been paid to determine financial responsibility for the payment of the taxes imposed by this chapter.

If a person under this section refuses access to pertinent records, books, papers, receipts, invoices, storage tanks, or any other equipment, the appropriate state agency shall certify the names and facts to any court of competent jurisdiction, and the court shall enter an order to enforce this chapter.

95 Acts, ch 155, §31
1995 amendments effective January 1, 1996; 95 Acts, ch 155, §44
Section amended

452A.63 Information confidential.

All information obtained by the department of revenue and finance or the state department of transportation from the examining of reports or records required to be filed or kept under this chapter shall be treated as confidential and shall not be divulged except to other state officers, a member or members of the general assembly, or any duly appointed committee of either or both houses of the general assembly, or to a representative of the state having some responsibility in connection with the collection of the taxes imposed or in proceedings brought under the provisions of this chapter. The department of revenue and finance or the state department of transportation, upon request of officials entrusted with enforcement of the motor vehicle fuel tax laws of the federal government or any other state, may forward to such officials any pertinent information which the appropriate state agency may have relative to motor fuel and special fuel provided the officials of the other state furnish like information.

Any person violating the provisions of this section, and disclosing the contents of any records or reports required to be kept or made under the provisions of this chapter, except as otherwise provided, shall be guilty of a simple misdemeanor.

95 Acts, ch 155, §32
1995 amendments to unnumbered paragraph 1 effective January 1, 1996;
95 Acts, ch 155, §44
Unnumbered paragraph 1 amended

452A.71 Refunds to persons other than distributors and compressed natural gas and liquefied petroleum gas dealers and users.

Except as provided in section 452A.54, any person other than a person who has paid or has had charged to the person's account with a distributor, dealer, or user fuel taxes imposed under this chapter with respect to motor fuel or undyed special fuel in excess of one hundred gallons, which is subsequently lost or destroyed, while the person is the owner, through leakage, fire, explosion, lightning, flood, storm, or other casualty, except evaporation, shrinkage, or unknown causes, the person shall be entitled to a refund of the tax so paid or charged. To qualify for the refund, the person shall notify the department of revenue and finance in writing of the loss or destruction and the gallonage lost or destroyed within ten days from the date of discovery of the loss or destruction. Within sixty days after filing the notice, the person shall file with the department of revenue and finance an affidavit sworn to by the person having immediate custody of the motor fuel or undyed special fuel at the

time of the loss or destruction setting forth in full the circumstances and amount of the loss or destruction and such other information as the department of revenue and finance may require. Any refund payable under this section may be applied by the department against any tax liability outstanding on the books of the department against the claimant.

95 Acts, ch 155, §33
1995 amendments effective January 1, 1996; 95 Acts, ch 155, §44
Section amended

452A.73 Embezzlement of fuel tax money — penalty.

Every sale of motor fuel in this state and every sale of undyed special fuel dispensed by the seller into a fuel supply tank of a motor vehicle shall, unless otherwise provided, be presumed to include as a part of the purchase price the fuel tax due the state of Iowa under the provisions of this chapter. Every person collecting fuel tax money as part of the selling price of motor fuel or undyed special fuel, shall hold the tax money in trust for the state of Iowa unless the fuel tax on the fuel has been previously paid to the state of Iowa. Any person receiving fuel tax money in trust and failing to remit it to the department of revenue and finance on or before time required shall be guilty of theft.

95 Acts, ch 155, §34
1995 amendments effective January 1, 1996; 95 Acts, ch 155, §44
Section amended

452A.74 Unlawful acts — penalty.

It shall be unlawful:

1. For any person to knowingly fail, neglect, or refuse to make any required return or statement or pay over fuel taxes required under this section.*

2. For any person to knowingly make any false, incorrect, or materially incomplete record required to be kept or made under this chapter, to refuse to offer required books and records to the department of revenue and finance or the state department of transportation for inspection on demand or to refuse to permit the department of revenue and finance or the state department of transportation to examine the person's motor fuel or undyed special fuel storage tanks and handling or dispensing equipment.

3. For any seller to issue or any purchaser to receive and retain any incorrect or false invoice or sales ticket in connection with the sale or purchase of motor fuel or undyed special fuel.

4. For any claimant to alter any invoice or sales ticket, whether the invoice or sales ticket is to be used to support a claim for refund or income tax credit or not, provided, however, if a claimant's refund permit has been revoked for cause as provided in section 452A.19, the revocation shall serve as a bar to prosecution for violation of this subsection.

5. For any person to act as a supplier, restrictive supplier, importer, exporter, blender, or compressed natural gas or liquefied petroleum gas dealer or user without the required license.

6. For any person to use motor fuel, undyed special fuel, or illegal use of dyed special fuel in the fuel

supply tank of a vehicle with respect to which the person knowingly has not paid or had charged to the person's account with a distributor or dealer, or with respect to which does not within the time required in this chapter report and pay the applicable fuel tax.

7. For any licensed compressed natural gas or liquefied petroleum gas dealer or user to dispense compressed natural gas or liquefied petroleum gas into the fuel supply tank of any motor vehicle without collecting the fuel tax.

8. Any delivery by a distributor of compressed natural gas or liquefied petroleum gas to a compressed natural gas or liquefied petroleum gas dealer or user for the purpose of evading the state tax on compressed natural gas or liquefied petroleum gas, into facilities other than those licensed above knowing that the fuel will be used for highway use shall constitute a violation of this section. Any compressed natural gas or liquefied petroleum gas dealer or user for purposes of evading the state tax on compressed natural gas or liquefied petroleum gas, who allows a distributor to place compressed natural gas or liquefied petroleum gas for highway use in facilities other than those licensed above, shall also be deemed in violation of this section.

A person found guilty of an offense specified in this section is guilty of a fraudulent practice. For purposes of determining the place of trial, the situs of an offense specified in this section is in the county of the residence of the person charged with the offense. However, if the person is a nonresident or the person's residence cannot be determined, the situs of the offense is in Polk county. Prosecution for an offense specified in this section shall be commenced within six years following its commission.

95 Acts, ch 155, §35
See §452A.19
Fraudulent practices, see §714.8 through 714.14
**Chapter* probably intended; corrective legislation is pending
1995 amendments effective January 1, 1996; 95 Acts, ch 155, §44
Section amended

452A.74A Additional penalty and enforcement provisions.

In addition to the tax or additional tax, the following fines and penalties shall apply:

1. *Illegal use of dyed fuel.* The illegal use of dyed fuel in the supply tank of a motor vehicle shall result in a civil penalty assessed against the owner or operator of the motor vehicle as follows:

a. A two hundred dollar fine for the first violation.

b. A five hundred dollar fine for a second violation within three years of the first violation.

c. A one thousand dollar fine for third and subsequent violations within three years of the first violation.

2. *Illegal importation of untaxed fuel.* A person who illegally imports motor fuel or undyed special fuel without a valid importer's license or supplier's license shall be assessed a civil penalty as provided in this subsection. However, the owner or operator of the importing vehicle shall not be guilty of violating

this subsection if it is shown by the owner or operator that the owner or operator reasonably did not know or reasonably should not have known of the illegal importation.

a. For a first violation, the importing vehicle shall be detained and a fine of two thousand dollars shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable for payment of the fine.

b. For a second violation, the importing vehicle shall be detained and a fine of five thousand dollars shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the fine.

c. For third and subsequent violations, the importing vehicle and the fuel shall be seized and a fine of ten thousand dollars shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the fine.

d. If the owner or operator of the importing vehicle or the owner of the fuel fails to pay the tax and fine for a first or second offense, the importing vehicle and the fuel may be seized. The department of revenue and finance, the state department of transportation, or any peace officer, at the request of either department, may seize the vehicle and the fuel.

e. If the operator or owner of the importing vehicle or the owner of the fuel move the vehicle or the fuel after the vehicle has been detained and a sticker has been placed on the vehicle stating that "This vehicle cannot be moved until the tax, penalty, and interest have been paid to the Department of Revenue and Finance", an additional penalty of five thousand dollars shall be assessed against the operator or owner of the importing vehicle or the owner of the fuel.

f. For purposes of this subsection, "vehicle" means as defined in section 321.1.

3. *Improper receipt of fuel credit or refund.* If a person files an incorrect refund claim, in addition to the amount of the claim, a penalty of ten percent shall be added to the amount by which the amount claimed and refunded exceeds the amount actually due and shall be paid to the department. If a person knowingly files a fraudulent refund claim with the intent to evade the tax, the penalty shall be seventy-five percent in lieu of the ten percent. The person shall also pay interest on the excess refunded at the rate per month specified in section 421.7, counting each fraction of a month as an entire month, computed from the date the refund was issued to the date the excess refund is repaid to the state.

4. *Illegal heating of fuel.* The deliberate heating of taxable motor fuel or special fuel by dealers prior to consumer sale is a simple misdemeanor.

5. *Prevention of inspection.* The department of revenue and finance or the state department of transportation may conduct inspections for coloration, markers, and shipping papers at any place where taxable fuel is or may be loaded into transport ve-

hicles, produced, or stored. Any attempts by a person to prevent, stop, or delay an inspection of fuel or shipping papers by authorized personnel shall be subject to a civil penalty of not more than one thousand dollars per occurrence. Any law enforcement officer or department of revenue and finance or state department of transportation employee may physically inspect, examine or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of any type of fuel.

6. *Failure to conspicuously label a fuel pump.* A retailer who does not conspicuously label a fuel pump or other delivery facility as required by the internal revenue service, that dispenses dyed diesel fuel so as to notify customers that it contains dyed diesel fuel, shall pay to the department a penalty of one hundred dollars per occurrence.

7. *False or fraudulent return.* Any person, including an officer of a corporation or a manager of a limited liability company, who is required to make, render, sign, or verify any report or return required by this chapter and who makes a false or fraudulent report, or who fails to file a report or return with the intent to evade the tax, shall be guilty of a fraudulent practice. Any person who aids, abets, or assists another person in making any false or fraudulent return or false statement in any return with the intent to evade payment of tax shall be guilty of a fraudulent practice.

95 Acts, ch 155, §36

Fraudulent practices, see §714.8 through 714.14

Effective January 1, 1996; 95 Acts, ch 155, §44

NEW section

452A.76 Enforcement authority.

Authority to enforce division III is given to the state department of transportation. Employees of the department of transportation designated enforcement employees have the power of peace officers in the performance of their duties; however, they shall not be considered members of the Iowa highway safety patrol. The department of transportation shall furnish enforcement employees with necessary equipment and supplies in the same manner as provided in section 80.18, including uniforms which are distinguishable in color and design from those of the Iowa highway safety patrol. Enforcement employees shall be furnished and shall conspicuously display badges of authority.

Authority is given to the department of revenue and finance, the state department of transportation, the department of public safety, and any peace officer as requested by such departments to enforce the provisions of division I and this division of this chapter. The department of revenue and finance shall adopt rules providing for enforcement under division I and this division of this chapter regarding the use of motor fuel or special fuel in implements of husbandry. Enforcement personnel or requested peace officers are authorized to stop a conveyance suspected to be illegally transporting motor fuel or

special fuel on the highways, to investigate the cargo, and also have the authority to inspect or test the fuel in the supply tank of a conveyance to determine if legal fuel is being used to power the conveyance. The operator of any vehicle transporting motor fuel or special fuel shall, upon request, produce and offer for inspection the manifest or loading and delivery invoices pertaining to the load and trip in question and shall permit the authority to inspect and measure the contents of the vehicle. If the vehicle operator fails to produce the evidence or if, when produced, the evidence fails to contain the required information and it appears that there is an attempt to evade payment of the fuel tax, the vehicle operator will be subject to the penalty provisions contained in section 452A.74A. For purposes of this section, "vehicle" means as defined in section 321.1.

95 Acts, ch 155, §37
1995 amendments effective January 1, 1996; 95 Acts, ch 155, §44
Section amended

452A.80 Microfilm or photographic copies — originals destroyed.

The appropriate state agency shall have the power and authority to record, copy, or reproduce by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original of any forms or records pertaining to motor fuel tax or undyed special fuel tax, or any paper or document with respect to refund of the tax. If the forms and records have been reproduced in accordance with this section, the state agency may destroy the originals and the reproductions shall be competent evidence in any court in accordance with the provision of section 622.30.

95 Acts, ch 155, §38
1995 amendments effective January 1, 1996; 95 Acts, ch 155, §44
Section amended

452A.84 Transfer to state general fund.

The treasurer of state shall transfer from the motor fuel tax fund to the general fund of the state that portion of moneys collected under this chapter attributable to motor fuel used in watercraft computed as follows:

1. Determine monthly the total amount of motor fuel tax collected under this chapter and multiply the amount by nine-tenths of one percent.

2. Subtract from the figure computed pursuant to subsection 1 of this section three percent of the figure for administrative costs and further subtract from the figure the amounts refunded to commercial fishers pursuant to section 452A.17, subsection 1, paragraph "a", subparagraph (7). All moneys remaining after claims for refund and the cost of administration have been made shall be transferred to the general fund of the state.

95 Acts, ch 155, §39
1995 amendment effective January 1, 1996; 95 Acts, ch 155, §44
Section amended

452A.85 Tax payment for stored motor fuel, ethanol blended gasoline, special fuel, compressed natural gas, and liquefied petroleum gas — penalty.

1. Persons having title to motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, or liquefied petroleum gas in storage and held for sale on the effective date of an increase in the excise tax rate imposed on motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, or liquefied petroleum gas under this chapter shall be subject to an inventory tax based upon the gallonage in storage as of the close of the business day preceding the effective date of the increased excise tax rate of motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, or liquefied petroleum gas which will be subject to the increased excise tax rate.

2. Persons subject to the tax imposed under this section shall take an inventory to determine the gallonage in storage for purposes of determining the tax and shall report the gallonage and pay the tax due within thirty days of the prescribed inventory date. The department of revenue and finance shall adopt rules pursuant to chapter 17A as are necessary to administer this section.

3. The amount of the inventory tax is equal to the inventory tax rate times the gallonage in storage as determined under subsection 1. The inventory tax rate is equal to the difference of the increased excise tax rate less the previous excise tax rate.

95 Acts, ch 155, §40
1995 amendments effective January 1, 1996; inventory and tax required for undyed special fuel in storage as of January 1, 1996; exemption for on-farm storage; 95 Acts, ch 155, §42, 44
Section amended

452A.86 Method of determining gallonage.

The exclusive method of determining gallonage of any purchases or sales of motor fuel, undyed special fuel, compressed natural gas, or liquefied petroleum gas as defined in this chapter and distillate fuels shall be on a gross volume basis. A temperature-adjusted or other method shall not be used, except as it applies to liquefied petroleum gas and the sale or exchange of petroleum products between petroleum refiners. All invoices, bills of lading, or other records of sale or purchase and all reports or records required to be made, kept, and maintained by a supplier, restrictive supplier, importer, exporter, blender, or compressed natural gas or liquefied petroleum gas dealer or user shall be made, kept, and maintained on the gross volume basis. For purposes of this section, "distillate fuels" means any fuel oil, gas oil, topped crude oil, or other petroleum oils derived by refining or processing crude oil or unfinished oils which have a boiling range at atmospheric pressure which falls completely or in part between five hundred fifty and twelve hundred degrees Fahrenheit.

95 Acts, ch 155, §41
1995 amendments effective January 1, 1996; 95 Acts, ch 155, §44
Section amended

CHAPTER 453B

EXCISE TAX ON UNLAWFUL DEALING IN CERTAIN SUBSTANCES

453B.1 Definitions.

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

1. "Controlled substance" means controlled substance as defined in section 124.101.

2. "Counterfeit substance" means a counterfeit substance as defined in section 124.101.

3. "Dealer" means any person who ships, transports, or imports into this state or acquires, purchases, possesses, manufactures, or produces in this state any of the following:

a. Seven or more grams of a taxable substance other than marijuana, but including a taxable substance that is a mixture of marijuana and other taxable substances.

b. Forty-two and one-half grams or more of processed marijuana or of a substance consisting of or containing marijuana.

c. One or more unprocessed marijuana plants.

d. Ten or more dosage units of a taxable substance which is not sold by weight.

However, a person who lawfully ships, transports, or imports into this state or acquires, purchases, possesses, manufactures, or produces a taxable substance in this state is not considered a dealer.

4. "Department" means the department of revenue and finance.

5. "Director" means the director of revenue and finance.

6. "Dosage unit" means the unit of measurement in which a substance is dispensed to the ultimate user. Dosage unit includes, but is not limited to, one pill, one capsule, or one microdot.

7. "Marijuana" means marijuana as defined in section 124.101.

8. "Processed marijuana" means all marijuana except unprocessed marijuana plants.

9. "Simulated controlled substance" means a simulated controlled substance as defined in section 124.101.

10. "Taxable substance" means a controlled substance, a counterfeit substance, a simulated controlled substance, or marijuana, or a mixture of materials that contains a controlled substance, counterfeit substance, simulated controlled substance, or marijuana.

11. "Unprocessed marijuana plant" means any cannabis plant at any level of growth, whether wet, dry, harvested, or growing.

95 Acts, ch 83, §29-31
 Subsection 3, paragraph b amended
 Subsection 3, NEW paragraph c and former paragraph c relettered as d
 NEW subsection 8 and former subsections 8 and 9 renumbered as 9 and 10
 NEW subsection 11

453B.7 Tax imposed — rate of tax.

An excise tax is imposed on dealers at the following rates:

1. On each gram of processed marijuana, or each portion of a gram, five dollars.

2. On each gram or portion of a gram of any taxable substance sold by weight other than marijuana, two hundred fifty dollars.

3. On each unprocessed marijuana plant, seven hundred fifty dollars.

4. On each ten dosage units of any taxable substance, other than unprocessed marijuana plants, that is not sold by weight, or portion thereof, four hundred dollars.

95 Acts, ch 83, §32
 Section amended

CHAPTER 455A

DEPARTMENT OF NATURAL RESOURCES

455A.17A Review of allocation of REAP moneys — congress on resources enhancement and protection.

1. During the 1996 congress on resources enhancement and protection, the congress shall review the Iowa resources enhancement and protection fund allocations and uses of moneys provided under the separate accounts of the fund, pursuant to section 455A.19, and recommend changes regarding the allocations or uses of those moneys, but only if the congress determines that changes should be made. The congress shall review the allocations and uses of the moneys based upon the purposes of the fund as provided in sections 455A.15 and 455A.16. The con-

gress shall review the percentage of allocation of moneys to each account and determine whether the moneys expended from the account meet current needs, and whether the state is in a position to maintain resources already under state control.

2. As part of the review, the congress shall review the open spaces account as provided in section 455A.19, and specifically how moneys in the account are used, including issues relating to all of the following:

a. The acquisition of land, including the process of determining what land should be eligible for acquisition, the amount of land acquired, the purpose of land acquisition, land acquisition prices, the crop

suitability rating of acquired land, lost property taxes, maintenance performed on acquired land, and proposed uses and maintenance of the land.

b. The expenditure of moneys for purposes of supporting open spaces projects, including the purpose of the projects, project costs, proposed or needed projects, the purposes of proposed or needed projects, and the estimated costs of completing proposed or needed projects.

3. If the congress determines that the allocations of the moneys to specific accounts or the uses of moneys in those accounts under section 455A.19 should be changed, the congress shall include that finding and provide recommendations to the governor, the general assembly, and the natural resource commission as part of a report which shall be included with any other recommendations made by the congress pursuant to section 455A.17. If the congress determines that no changes are necessary, the congress shall include that finding as part of the recommendations made by the congress pursuant to section 455A.17.

95 Acts, ch 216, §38

Section is repealed effective July 1, 1997; 95 Acts, ch 216, §41

NEW section

455A.19 Allocation of fund proceeds.

1. Upon receipt of any revenue, the director shall deposit the moneys in the Iowa resources enhancement and protection fund created pursuant to section 455A.18. The first three hundred fifty thousand dollars of the funds received for deposit in the fund annually shall be allocated to the conservation education board for the purposes specified in section 256.34. One percent of the revenue receipts shall be deducted and transferred to the administration fund provided for in section 456A.17. All of the remaining receipts shall be allocated to the following accounts:

a. Twenty-eight percent shall be allocated to the open spaces account. At least ten percent of the allocations to the account shall be made available to match private funds for open space projects on the cost-share basis of not less than twenty-five percent private funds pursuant to the rules adopted by the natural resources commission. Five percent of the funds allocated to the open spaces account shall be used to fund the protected waters program. This account shall be used by the department to implement the statewide open space acquisition, protection, and development programs.

The department shall give priority to acquisition and control of open spaces of statewide significance. The department shall also use these funds for developments on state property. The total cost of an open spaces project funded under this paragraph "a" shall not exceed two million dollars unless a public hearing is held on the project in the area of the state affected by the project. However, on and after July 1, 1994, the following shall apply:

(1) If the total amount appropriated by the general assembly to the resources enhancement and protection fund, in any fiscal year as defined in sec-

tion 8.36, is seven million dollars or more, not more than seventy-five percent of moneys in the open spaces account shall be allocated or obligated during that fiscal year to support a single project.

(2) If the total amount appropriated by the general assembly to the resources enhancement and protection fund, in any fiscal year as defined in section 8.36, is less than seven million dollars, not more than fifty percent of moneys in the open spaces account shall be allocated or obligated during that fiscal year to support a single project.

Political subdivisions of the state shall be reimbursed for property tax dollars lost to open space acquisitions based on the reimbursement formula provided for in section 465A.4. There is appropriated from the open spaces account to the department the amount in that account, or so much thereof as is necessary, to carry out the open spaces program as specified in this paragraph "a". An appropriation made under this paragraph "a" shall continue in force for two fiscal years after the fiscal year in which the appropriation was made or until completion of the project. All unencumbered or unobligated funds remaining at the close of the fiscal year in which the project is completed or at the close of the final fiscal year, whichever date is earlier, shall revert to the open spaces account.

b. Twenty percent shall be allocated to the county conservation account.

(1) Thirty percent of the allocation to the county conservation account annually shall be allocated to each county equally.

(2) Thirty percent of the allocation to the county conservation account annually shall be allocated to each county on a per capita basis.

(3) Forty percent of the allocation to the county conservation account annually shall be held in an account in the state treasury for the natural resource commission to award to counties on a competitive grant basis by a project selection committee established in this subparagraph. Local matching funds are not required for grants awarded under this subparagraph. The project planning and review committee shall be composed of two staff members of the department and two county conservation board directors appointed by the director and a fifth member selected by a majority vote of the director's appointees. The natural resource commission, by rule, shall establish procedures for application, review, and selection of county projects submitted for funding. Upon recommendation of the project planning and review committee, the director shall award the grants.

(4) Funds allocated to the counties under subparagraphs (1), (2), and (3) may be used for land easements or acquisitions, capital improvements, stabilization and protection of resources, repair and upgrading of facilities, environmental education, and equipment. However, expenditures are not allowed for single or multipurpose athletic fields, baseball or softball diamonds, tennis courts, golf courses, swimming pools, and other group or organized sport fa-

ilities. Funds may be used for county projects located within the boundaries of a city.

(5) Funds allocated pursuant to subparagraphs (2) and (3) shall only be allocated to counties dedicating property tax revenue at least equal to twenty-two cents per thousand dollars of the assessed value of taxable property in the county to county conservation purposes. State funds received under this paragraph shall not reduce or replace county tax revenues appropriated for county conservation purposes. The county auditor shall submit documentation annually of the dedication of property tax revenue for county conservation purposes. The annual audit of the financial transactions and condition of a county shall certify compliance with requirements of this subparagraph. Funds not allocated to counties not qualifying for the allocations under subparagraph (2) as a result of this subparagraph shall be held in reserve for each county for two years. Counties qualifying within two years may receive the funds held in reserve. Funds not spent by a county within two years shall revert to the general pool of county funds for reallocation to other counties where needed.

(6) Each board of supervisors shall create a special resource enhancement account in the office of county treasurer and the county treasurer shall credit all resource enhancement funds received from the state in that account. Notwithstanding section 12C.7, all interest earned on funds in the county resource enhancement account shall be credited to that account and used for the purposes authorized for that account.

(7) There is appropriated from the county conservation account to the department the amount in that account, or so much thereof as is necessary, to fund the provisions of this paragraph. An appropriation made under this paragraph shall continue in force for two fiscal years after the fiscal year in which the appropriation was made or until completion of the project for which the appropriation was made, whichever date is earlier. All unencumbered or unobligated funds remaining at the close of the fiscal year in which a project funded pursuant to subparagraph (3) is completed or at the close of the third fiscal year, whichever date is earlier, shall revert to the county conservation account.

(8) Any funds received by a county under this paragraph may be used to match other state or federal funds, and multicounty or multiagency projects may be funded under this paragraph.

c. Twenty percent shall be allocated to the soil and water enhancement account. The moneys shall be used to carry out soil and water enhancement programs including, but not limited to, reforestation, woodland protection and enhancement, wildlife habitat preservation and enhancement, protection of highly erodible soils, and clean water programs. The division of soil conservation, by rule, shall establish procedures for eligibility, application, review, and selection of projects and practices to implement the requirements of this paragraph. There is appropriated from the soil and water enhancement account to

the soil conservation division the amount in that account, or so much thereof as is necessary, to carry out the programs as specified in this paragraph. Remaining funds of the soil and water conservation account shall be allocated to the accounts of the water protection fund authorized in section 161C.4. Annually, fifty percent of the soil and water enhancement account funds, not to exceed one million dollars, shall be allocated to the water quality protection projects account. The balance of the funds shall be allocated to the water protection practices account. An appropriation made under this paragraph shall continue in force for two fiscal years after the fiscal year in which the appropriation was made or until completion of the project for which the appropriation was made, whichever date is earlier. All unencumbered or unobligated funds remaining at the close of the fiscal year in which the project is completed or at the close of the third fiscal year, whichever date is earlier, shall revert to the soil and water enhancement account.

d. Fifteen percent shall be allocated to a cities' parks and open space account. The moneys allocated in this paragraph may be used to fund competitive grants to cities to acquire, establish, and maintain natural parks, preserves, and open spaces. The grants may include expenditures for multipurpose trails, restroom facilities, shelter houses, and picnic facilities, but expenditures for single or multipurpose athletic fields, baseball or softball diamonds, tennis courts, golf courses, swimming pools, and other group or organized sport facilities requiring specialized equipment are excluded. The grants may be used for city projects located outside of a city's boundaries. The natural resource commission, by rule, shall establish procedures for application, review, and selection of city projects on a competitive basis. The rules shall provide for three categories of cities based on population within which the cities shall compete for grants. There is appropriated from the cities' parks and open space account to the department the amount in that account, or so much thereof as is necessary, to carry out the competitive grant program as provided in this paragraph.

e. Nine percent shall be allocated to the state land management account. The department shall use the moneys allocated to this account for maintenance and expansion of state lands and related facilities under its jurisdiction. The authority to expand state lands and facilities under this paragraph is limited to expansion of the state lands and facilities already owned by the state. There is appropriated from the state land management account to the department the moneys in that account, or so much thereof as is necessary, to implement a maintenance and expansion program for state lands and related facilities under the jurisdiction of the department.

f. Five percent shall be allocated to the historical resource grant and loan fund established pursuant to section 303.16. The department of cultural affairs shall use the moneys allocated to this fund to implement historical resource development programs as provided under section 303.16.

g. Three percent shall be allocated to the living roadway account for distribution to the living roadway trust fund created under section 314.21 for the development and implementation of integrated roadside vegetation plans.

2. The moneys appropriated under this section shall remain in the appropriate account of the Iowa resources enhancement and protection fund until such time as the agency, board, commission, or overseer of the fund to which moneys are appropriated has made a request to the treasurer for use of moneys appropriated to it and the amount needed for that use. Notwithstanding section 8.33, moneys remaining of the appropriations made for a fiscal year from any of the accounts within the Iowa resources enhancement and protection fund on June 30 of that fiscal year, shall not revert to any fund but shall remain in that account to be used for the purposes for

which they were appropriated and the moneys remaining in that account shall not be considered in making the allotments for the next fiscal year.

However, any moneys in excess of \$500,000, remaining in the living roadway account under subsection 1, paragraph "g", on June 30 shall revert to the resources enhancement and protection fund under this section for distribution pursuant to the formula under this section except for subsection 1, paragraph "g". That proportion of moneys that would have been reallocated to subsection 1, paragraph "g", shall be distributed to the open spaces account under subsection 1, paragraph "a".

95 Acts, ch 220, §29, 30

Standing appropriation to resources enhancement and protection fund limited for 1995-1996 fiscal year; 95 Acts, ch 216, §11

Subsection 1, paragraph g stricken and rewritten

Subsection 2, NEW unnumbered paragraph 2

CHAPTER 455B

JURISDICTION OF DEPARTMENT OF NATURAL RESOURCES

455B.109 Schedule of fines — violations.

1. The commission shall establish, by rule, a schedule or range of civil penalties which may be administratively assessed. The schedule shall provide procedures and criteria for the administrative assessment of penalties of not more than ten thousand dollars for violations of this chapter or rules, permits or orders adopted or issued under this chapter. In adopting a schedule or range of penalties and in proposing or assessing a penalty, the commission and director shall consider among other relevant factors the following:

- a. The costs saved or likely to be saved by non-compliance by the violator.
- b. The gravity of the violation.
- c. The degree of culpability of the violator.
- d. The maximum penalty authorized for that violation under this chapter.

Penalties may be administratively assessed only after an opportunity for a contested case hearing which may be combined with a hearing on the merits of the alleged violation. Violations not fitting within the schedule, or violations which the commission determines should be referred to the attorney general for legal action shall not be governed by the schedule established under this subsection.

2. When the commission establishes a schedule for violations, the commission shall provide, by rule, a procedure for the screening of alleged violations to determine which cases may be appropriate for the administrative assessment of penalties. However, the screening procedure shall not limit the discretion of the department to refer any case to the attorney general for legal action.

3. A penalty shall be paid within thirty days of the date the order assessing the penalty becomes final. When a person against whom a civil penalty is

assessed under this section seeks timely judicial review of an order imposing the penalty as provided under chapter 17A, the order is not final for the purposes of this section until all judicial review processes are completed. Additional judicial review may not be sought after the order becomes final. A person who fails to timely pay a civil penalty assessed by a final order of the department shall pay, in addition, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid. The attorney general shall institute, at the request of the department, summary proceedings to recover the penalty and any accrued interest.

4. All civil penalties assessed by the department and interest on the penalties shall be deposited in the general fund of the state. However, civil penalties assessed by the department and interest on penalties, arising out of violations committed by animal feeding operations under division II, part 2, shall be deposited in the manure storage indemnity fund as created in section 204.2. Civil penalties assessed by the department and interest on the penalties arising out of violations committed by animal feeding operations under division III, which may be assessed pursuant to section 455B.191, shall be deposited in the manure storage indemnity fund as created in section 204.2.

5. This section does not require the commission or the director to pursue an administrative remedy before seeking a remedy in the courts of this state.

95 Acts, ch 195, §12

Subsection 4 amended

455B.110 Animal feeding operations — commission approval of enforcement actions.

The department shall not initiate an enforcement

action in response to a violation by an animal feeding operation as provided in this chapter or a rule adopted pursuant to this chapter, or request the commencement of legal action by the attorney general pursuant to section 455B.141, unless the commission has approved the intended action. This section shall not apply to an enforcement action in which the department enforces a civil penalty of three thousand dollars or less. This section shall also not apply to an order to terminate an emergency issued by the director pursuant to section 455B.175.

95 Acts, ch 195, §13
NEW section

455B.133 Duties.

The commission shall:

1. Develop comprehensive plans and programs for the abatement, control, and prevention of air pollution in this state, recognizing varying requirements for different areas in the state. The plans may include emission limitations, schedules and timetables for compliance with the limitations, measures to prevent the significant deterioration of air quality and other measures as necessary to assure attainment and maintenance of ambient air quality standards.

2. Adopt, amend, or repeal rules pertaining to the evaluation, abatement, control, and prevention of air pollution. The rules may include those that are necessary to obtain approval of the state implementation plan under section 110 of the federal Clean Air Act as amended through January 1, 1991.

3. Adopt, amend, or repeal ambient air quality standards for the atmosphere of this state on the basis of providing air quality necessary to protect the public health and welfare and to reduce emissions contributing to acid rain pursuant to Title IV of the federal Clean Air Act Amendments of 1990.

4. Adopt, amend, or repeal emission limitations or standards relating to the maximum quantities of air contaminants that may be emitted from any air contaminant source. The standards or limitations adopted under this section shall not exceed the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act as amended through January 1, 1991. This does not prohibit the commission from adopting a standard for a source or class of sources for which the United States environmental protection agency has not promulgated a standard. This also does not prohibit the commission from adopting an emission standard or limitation for infectious medical waste treatment or disposal facilities which exceeds the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act as amended through January 1, 1991. The commission shall not adopt an emission standard or limitation for infectious medical waste treatment or disposal facilities prior to January 1, 1995, which exceeds the standards or limitations promulgated by the administrator of the United States environmen-

tal protection agency or the requirements of the federal Clean Air Act, as amended through January 1, 1991, for a hospital, or a group of hospitals, licensed under chapter 135B which has been operating an infectious medical waste treatment or disposal facility prior to January 1, 1991.

a. (1) The commission shall establish standards of performance unless in the judgment of the commission it is not feasible to adopt or enforce a standard of performance. If it is not feasible to adopt or enforce a standard of performance, the commission may adopt a design, equipment, material, work practice or operational standard, or combination of those standards in order to establish reasonably available control technology or the lowest achievable emission rate in nonattainment areas, or in order to establish best available control technology in areas subject to prevention of significant deterioration review, or in order to adopt the emission limitations promulgated by the administrator of the United States environmental protection agency under section 111 or 112 of the federal Clean Air Act as amended through January 1, 1991.

(2) If a person establishes to the satisfaction of the commission that an alternative means of emission limitation will achieve a reduction in emissions of an air pollutant at least equivalent to the reduction in emissions of the air pollutant achieved under the design, equipment, material, work practice or operational standard, the commission shall amend its rules to permit the use of the alternative by the source for purposes of compliance with this paragraph with respect to the pollutant.

(3) A design, equipment, material, work practice or operational standard promulgated under this paragraph shall be promulgated in terms of a standard of performance when it becomes feasible to promulgate and enforce the standard in those terms.

(4) For the purpose of this paragraph, the phrase "not feasible to adopt or enforce a standard of performance" refers to a situation in which the commission determines that the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

b. If the maximum standards for the emission of sulphur dioxide from solid fuels have to be reduced in an area to meet ambient air quality standards, a contract for coal produced in Iowa and burned by a facility in that area that met the sulphur dioxide emission standards in effect at the time the contract went into effect shall be exempted from the decreased requirement until the expiration of the contract period or December 31, 1983, whichever first occurs, if there is any other reasonable means available to satisfy the ambient air quality standards. To qualify under this subsection, the contract must be recorded with the county recorder of the county where the burning facility is located within thirty days after the signing of the contract.

c. The degree of emission limitation required for control of an air contaminant under an emission

standard shall not be affected by that part of the stack height of a source that exceeds good engineering practice, as defined in rules, or any other dispersion technique. This paragraph shall not apply to stack heights in existence before December 30, 1970, or dispersion techniques implemented before that date.

5. Classify air contaminant sources according to levels and types of emissions, and other characteristics which relate to air pollution. The commission may require, by rule, the owner or operator of any air contaminant source to establish and maintain such records, make such reports, install, use and maintain such monitoring equipment or methods, sample such emissions in accordance with such methods at such locations and intervals, and using such procedures as the commission shall prescribe, and provide such other information as the commission may reasonably require. Such classifications may be for application to the state as a whole, or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

6. a. Require, by rules, notice of the construction of any air contaminant source which may cause or contribute to air pollution, and the submission of plans and specifications to the department, or other information deemed necessary, for the installation of air contaminant sources and related control equipment. The rules shall allow the owner or operator of a major stationary source to elect to obtain a conditional permit in lieu of a construction permit. The rules relating to a conditional permit for an electric power generating facility subject to chapter 476A and other major stationary sources shall allow the submission of engineering descriptions, flow diagrams and schematics that quantitatively and qualitatively identify emission streams and alternative control equipment that will provide compliance with emission standards. Such rules shall not specify any particular method to be used to reduce undesirable levels of emissions, nor type, design, or method of installation of any equipment to be used to reduce such levels of emissions, nor the type, design, or method of installation or type of construction of any manufacturing processes or kinds of equipment, nor specify the kind or composition of fuels permitted to be sold, stored, or used unless authorized by subsection 4 of this section.

b. The commission may give technical advice pertaining to the construction or installation of the equipment or any other recommendation.

7. Commission rules establishing maximum permissible sulfate content shall not apply to an expansion of an industrial anaerobic lagoon facility which was constructed prior to February 22, 1979.

8. a. Adopt rules consistent with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549, which require the owner or operator of an air contaminant source to obtain an operating permit prior to operation of the source. The rules shall specify the information required to be submitted with

the application for a permit and the conditions under which a permit may be granted, modified, suspended, terminated, revoked, reissued, or denied. For sources subject to the provisions of Title IV of the federal Clean Air Act Amendments of 1990, permit conditions shall include emission allowances for sulfur dioxide emissions. The commission may impose fees, including fees upon regulated pollutants emitted from an air contaminant source, in an amount sufficient to cover all reasonable costs, direct and indirect, required to develop and administer the permit program in conformance with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549. Affected units regulated under Title IV of the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549, shall pay operating permit fees in the same manner as other sources subject to operating permit requirements, except as provided in section 408 of the federal Act. The fees collected pursuant to this subsection shall be deposited in the air contaminant source fund created pursuant to section 455B.133B, and shall be utilized solely to cover all reasonable costs required to develop and administer the programs required by Title V of the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549, including the permit program pursuant to section 502 of the federal Act and the small business stationary source technical and environmental assistance program pursuant to section 507 of the federal Act.

b. Adopt rules allowing the department to issue a state operating permit to an owner or operator of an air contaminant source. The state operating permit granted under this paragraph may only be issued at the request of an air contaminant source and will be used to limit its potential to emit to less than one hundred tons per year of a criteria pollutant as defined by the United States environmental protection agency or ten tons per year of a hazardous air pollutant or twenty-five tons of any combination of hazardous air pollutants.

c. Adopt rules for the issuance of a single general permit, after notice and opportunity for a public hearing. The single general permit shall cover numerous sources to the extent that the sources are representative of a class of facilities which can be identified and conditioned by a single permit.

9. Adopt rules allowing asphalt shingles to be burned in a fire set for the purpose of bona fide training of public or industrial employees in fire fighting methods only if a notice is provided to the director containing testing results indicating that the asphalt shingles do not contain asbestos. Each fire department shall be permitted to host two fires per year as allowed under this subsection.

95 Acts, ch 2, §1
Moratorium regarding grain storage facility requirements; 95 Acts, ch 2, §2

Subsection 8, NEW paragraph c

455B.133A Temporary air toxics fee imposed. Repealed by 95 Acts, ch 26, § 4.

455B.133B Air contaminant source fund created.

An air contaminant source fund is created in the office of the treasurer of state under the control of the department. Moneys received from the fees assessed pursuant to section 455B.133, subsection 8, shall be deposited in the fund. Moneys in the fund shall be used solely to defray the costs related to the permit, monitoring, and inspection program, including the small business stationary source technical and environmental compliance assistance program required pursuant to the federal Clean Air Act Amendments of 1990, sections 502 and 507, Pub. L. No. 101-549. Notwithstanding section 8.33, any unexpended balance in the fund at the end of each fiscal year shall be retained in the fund. Notwithstanding section 12C.7, any interest and earnings on investments from money in the fund shall be credited to the fund.

95 Acts, ch 26, §1, 2
 Subsection 1 amended and changed to an unnumbered paragraph
 Subsection 2 stricken

455B.134 Director — duties — limitations.

The director shall:

1. Publish and administer the rules and standards established by the commission. The department shall furnish a copy of such rules or standards to any person upon request.

2. Provide technical, scientific, and other services required by the commission or for the effective administration of this division II.

3. Grant, modify, suspend, terminate, revoke, re-issue or deny permits for the construction or operation of new, modified, or existing air contaminant sources and for related control equipment, and conditional permits for electric power generating facilities subject to chapter 476A and other major stationary sources, subject to the rules adopted by the commission. The department shall furnish necessary application forms for such permits.

a. No air contaminant source shall be installed, altered so that it significantly affects emissions, or placed in use unless a construction or conditional permit has been issued for the source.

b. The condition of expected performance shall be reasonably detailed in the construction or conditional permit.

c. All applications for permits other than conditional permits for electric generating facilities shall be subject to such notice and public participation as may be provided by rule by the commission. Upon denial or limitation of a permit other than a conditional permit for an electric generating facility, the applicant shall be notified of such denial and informed of the reason or reasons therefor, and such applicant shall be entitled to a hearing before the commission.

d. All applications for conditional permits for electric power generating facilities shall be subject to such notice and opportunity for public participation as may be consistent with chapter 476A or any agree-

ment pursuant thereto under chapter 28E. The applicant or intervenor may appeal to the commission from the denial of a conditional permit or any of its conditions. For the purposes of chapter 476A, the issuance or denial of a conditional permit by the director or by the commission upon appeal shall be a determination that the electric power generating facility does or does not meet the permit and licensing requirements of the commission. The issuance of a conditional permit shall not relieve the applicant of the responsibility to submit final and detailed construction plans and drawings and an application for a construction permit for control equipment that will meet the emission limitations established in the conditional permit.

e. A regulated air contaminant source for which a construction permit or conditional permit has been issued shall not be operated unless an operating permit also has been issued for the source. However, if the facility was in compliance with permit conditions prior to the requirement for an operating permit and has made timely application for an operating permit, the facility may continue operation until the operating permit is issued or denied. Operating permits shall contain the requisite conditions and compliance schedules to ensure conformance with state and federal requirements including emission allowances for sulfur dioxide emissions for sources subject to Title IV of the federal Clean Air Act Amendments of 1990. If construction of a new air contaminant source is proposed, the department may issue an operating permit concurrently with the construction permit, if possible and appropriate.

f. (1) Notwithstanding any other provision of division II of this chapter, the following siting requirements shall apply to anaerobic lagoons and earthen waste slurry storage basins:

Anaerobic lagoons, constructed or expanded on or after June 20, 1979, but prior to May 31, 1995, or earthen waste slurry storage basins, constructed or expanded on or after July 1, 1990, but prior to May 31, 1995, which are used in connection with animal feeding operations containing less than six hundred twenty-five thousand pounds live animal weight capacity of animal species other than beef cattle or containing less than one million six hundred thousand pounds live animal weight capacity of beef cattle, shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. Anaerobic lagoons or earthen waste slurry storage basins, which are used in connection with animal feeding operations containing six hundred twenty-five thousand pounds or more live animal weight capacity of animal species other than beef cattle or containing one million six hundred thousand pounds or more live animal weight capacity of beef cattle, shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. For the purpose of this paragraph the

determination of live animal weight capacity shall be based on the average animal weight capacity during a production cycle and the maximum animal capacity of the animal feeding operation.

Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is one hundred thousand gallons per day or less shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road. Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is greater than one hundred thousand gallons per day shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road. These separation distances apply to the construction of new facilities and the expansion of existing facilities.

(2) A person may build or expand an anaerobic lagoon or an earthen waste slurry storage basin closer to a residence not owned by the owner of the anaerobic lagoon or to a public use area than is otherwise permitted by subparagraph (1) of this paragraph, if the affected landowners enter into a written agreement with the anaerobic lagoon owner to waive the separation distances under such terms the parties negotiate. The written agreement becomes effective only upon recording in the office of the recorder of deeds of the county in which the residence is located.

4. Determine by field studies and sampling the quality of atmosphere and the degree of air pollution in this state or any part thereof.

5. Conduct and encourage studies, investigations, and research relating to air pollution and its causes, effects, abatement, control, and prevention.

6. Provide technical assistance to political subdivisions of this state requesting such aid for the furtherance of air pollution control.

7. Collect and disseminate information, and conduct educational and training programs, relating to air pollution and its abatement, prevention, and control.

8. Consider complaints of conditions reported to, or considered likely to, constitute air pollution, and investigate such complaints upon receipt of the written petition of any state agency, the governing body of a political subdivision, a local board of health, or twenty-five affected residents of the state.

9. Issue orders consistent with rules to cause the abatement or control of air pollution, or to secure compliance with permit conditions. In making the orders, the director shall consider the facts and circumstances bearing upon the reasonableness of the emissions involved, including but not limited to, the character and degree of injury to, or interference with, the protection of health and the physical property of the public, the practicability of reducing or limiting the emissions from the air pollution source,

and the suitability or unsuitability of the air pollution source to the area where it is located. An order may include advisory recommendations for the control of emissions from an air contaminant source and the reduction of the emission of air contaminants.

10. Encourage voluntary co-operation by persons or affected groups in restoring and preserving a reasonable quality of air within the state.

11. Encourage political subdivisions to handle air pollution problems within their respective jurisdictions.

12. Review and evaluate air pollution control programs conducted by political subdivisions of the state with respect to whether the programs are consistent with the provisions of division II of this chapter and rules adopted by the commission.

13. Hold public hearings, except when the evidence to be received is confidential pursuant to section 455B.137, necessary to accomplish the purposes of division II of this chapter. The director may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to the hearings. A subpoena shall be issued and enforced in the same manner as in civil actions.

95 Acts, ch 195, §14
Subsection 3, paragraph f, subparagraph (1), unnumbered paragraph 2 amended

455B.152 through 455B.160 Reserved.

PART 2

ANIMAL FEEDING OPERATIONS REQUIREMENTS

Animal agriculture consulting organization to consult and make recommendations to department; future repeal of authorization; 95 Acts, ch 195, §37

455B.161 Definitions.

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

1. "*Anaerobic lagoon*" means an impoundment used in conjunction with an animal feeding operation, if the primary function of the impoundment is to store and stabilize organic wastes, the impoundment is designed to receive wastes on a regular basis, and the impoundment's design waste loading rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include any of the following:

- a. A confinement feeding operation structure.
 - b. A runoff control basin which collects and stores only precipitation-induced runoff from an animal feeding operation in which animals are confined to areas which are unroofed or partially roofed and in which no crop, vegetation, or forage growth or residue cover is maintained during the period in which animals are confined in the operation.
 - c. An anaerobic treatment system which includes collection and treatment facilities for all off gases.
2. "*Animal*" means a domesticated animal belonging to the bovine, porcine, ovine, caprine, equine, or avian species.

3. "*Animal feeding operation*" means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for forty-five days or more in any twelve-month period, and all structures used for the storage of manure from animals in the operation. Two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common system for manure storage. An animal feeding operation does not include a livestock market.

4. "*Animal feeding operation structure*" means an anaerobic lagoon or confinement feeding operation structure.

5. "*Animal weight capacity*" means the product of multiplying the maximum number of animals which the owner or operator confines in an animal feeding operation at any one time by the average weight during a production cycle.

6. "*Commercial enterprise*" means a building which is used as a part of a business that manufactures goods, delivers services, or sells goods or services, which is customarily and regularly used by the general public during the entire calendar year and which is connected to electric, water, and sewer systems. A commercial enterprise does not include a farm operation.

7. "*Confinement building*" means a building used in conjunction with a confinement feeding operation to house animals.

8. "*Confinement feeding operation*" means an animal feeding operation in which animals are confined to areas which are totally roofed.

9. "*Confinement feeding operation structure*" means a formed manure storage structure, egg wash-water storage structure, earthen manure storage basin, or confinement building. A confinement feeding operation structure does not include an anaerobic lagoon.

10. "*Covered*" means organic or inorganic material placed upon an animal feeding operation structure used to store manure as provided by rules adopted by the department after receiving recommendations which shall be submitted to the department by the college of agriculture at Iowa state university.

11. "*Earthen manure storage basin*" means an earthen cavity, either covered or uncovered, which, on a regular basis, receives waste discharges from a confinement feeding operation if accumulated wastes from the basin are completely removed at least once each year.

12. "*Educational institution*" means a building in which an organized course of study or training is offered to students enrolled in kindergarten through grade twelve and served by local school districts, accredited or approved nonpublic schools, area education agencies, community colleges, institutions of higher education under the control of the state board of regents, and accredited independent colleges and universities.

13. "*Egg washwater storage structure*" means an aerobic or anaerobic structure used to store the wastewater resulting from the washing and in-shell packaging of eggs.

14. "*Formed manure storage structure*" means a structure, either covered or uncovered, used to store manure from a confinement feeding operation, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials.

15. "*Livestock market*" means any place where animals are assembled from two or more sources for public auction, private sale, or on a commission basis, which is under state or federal supervision, including a livestock sale barn or auction market, if such animals are kept for ten days or less.

16. "*Manure*" means animal excreta or other commonly associated wastes of animals, including, but not limited to, bedding, litter, or feed losses.

17. "*Public use area*" means that portion of land owned by the United States, the state, or a political subdivision with facilities which attract the public to congregate and remain in the area for significant periods of time, as provided by rules which shall be adopted by the department pursuant to chapter 17A.

18. "*Religious institution*" means a building in which an active congregation is devoted to worship.

19. "*Small animal feeding operation*" means an animal feeding operation which has an animal weight capacity of two hundred thousand pounds or less for animals other than bovine, or four hundred thousand pounds or less for bovine.

20. "*Swine farrow-to-finish operation*" means a confinement feeding operation in which porcine are produced and in which a primary portion of the phases of the production cycle are conducted at one confinement feeding operation. Phases of the production cycle include, but are not limited to, gestation, farrowing, growing, and finishing.

455B.162 Animal feeding operations — new construction and expansion.

The following shall apply to animal feeding operation structures constructed on or after May 31, 1995; to the expansion of structures constructed on or after May 31, 1995; or, except as provided in section 455B.163, to the expansion of structures constructed prior to May 31, 1995:

1. Except as provided in subsection 2, the following table shall apply to animal feeding operation structures:

a. The following table represents the minimum separation distance in feet required between an animal feeding operation structure and a residence not owned by the owner of the animal feeding operation, or a commercial enterprise, bona fide religious institution, or an educational institution:

Type of structure	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 1,250,000 pounds for animals other than bovine, or 1,600,000 or more pounds but less than 4,000,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds for animals other than bovine, or 4,000,000 or more pounds for bovine
Anaerobic lagoon	1,250	1,875	2,500
Uncovered earthen manure storage basin	1,250	1,875	2,500
Uncovered formed manure storage structure	1,000	1,500	2,000
Covered earthen manure storage basin	750	1,000	1,500
Covered formed manure storage structure	750	1,000	1,500
Confinement building	750	1,000	1,500
Egg washwater storage structure	750	1,000	1,500

b. The following table represents the minimum separation distance in feet required between animal feeding operation structures and a public use area or a residence not owned by the owner of the animal feeding operation, a commercial enterprise, a bona fide religious institution, or an educational institution located within the corporate limits of a city:

Type of structure	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 1,250,000 pounds for animals other than bovine, or 1,600,000 or more pounds but less than 4,000,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds for animals other than bovine, or 4,000,000 or more pounds for bovine
Animal feeding operation structure	1,250	1,875	2,500

2. a. As used in this subsection, a “qualified confinement feeding operation” means a confinement feeding operation having an animal weight capacity of two million or more pounds for animals other than animals kept in a swine farrow-to-finish operation or bovine kept in a confinement feeding operation; a swine farrow-to-finish operation having an animal weight capacity of two million five hundred thousand or more pounds; or a confinement feeding operation having an animal weight capacity of six million or more pounds for bovine.

b. A qualified confinement feeding operation shall only use an animal feeding operation structure which employs bacterial action which is maintained by the utilization of air or oxygen, and which shall include aeration equipment. The type and degree of treatment technology required to be installed shall be based on the size of the confinement feeding operation, according to rules adopted by the department. The equipment shall be installed, operated, and maintained in accordance with the manufacturer’s instructions and requirements of rules adopted pursuant to this subsection.

c. This subsection shall not apply to a confinement feeding operation which stores manure as dry matter, or to an egg washwater storage structure. This subsection shall not apply to a confinement feeding operation, if the operation was constructed prior to May 31, 1995, or the department issued a permit prior to May 31, 1995, for the construction of an animal feeding operation structure connected to a confinement feeding operation and the construction began prior to May 31, 1995.

95 Acts, ch 195, §16
NEW section

455B.163 Separation distance requirements for animal feeding operations — expansion of structures constructed prior to May 31, 1995.

An animal feeding operation which does not comply with the distance requirements of section 455B.162 on May 31, 1995, may continue to operate regardless of those separation distances. The animal feeding operation may be expanded on or after May 31, 1995, regardless of those separation distances, if either of the following applies:

1. The animal feeding operation structure as constructed or expanded complies with the distance requirements of section 455B.162.

2. All of the following apply to the expansion of the animal feeding operation:

a. No portion of the animal feeding operation after expansion is closer than before expansion to a location or object for which separation is required under section 455B.162.

b. The animal weight capacity of the animal feeding operation as expanded is not more than the lesser of the following:

(1) Double its capacity on May 31, 1995.

(2) Either of the following:

(a) Six hundred twenty-five thousand pounds animal weight capacity for animals other than bovine.

(b) One million six hundred thousand pounds animal weight capacity for bovine.

95 Acts, ch 195, §17
NEW section

455B.164 Distance measurements.

All distances between locations or objects provided in this part shall be measured from their closest points, as provided by rules adopted by the department.

95 Acts, ch 195, §18
NEW section

455B.165 Separation distance requirements — exemptions.

A separation distance requirement provided in this part shall not apply to the following:

1. A confinement feeding operation structure which provides for the storage of manure exclusively in a dry form.

2. A confinement feeding operation structure, other than an earthen manure storage basin, if the structure is part of a confinement feeding operation which qualifies as a small animal feeding operation.

3. An animal feeding operation structure which is constructed or expanded, if the titleholder of the land benefiting from the distance separation requirement executes a written waiver with the titleholder of the land where the structure is located, under such terms and conditions that the parties negotiate. The written waiver becomes effective only upon the recording of the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The filed waiver shall preclude enforcement by the state of this part as it relates to the animal feeding operation structure.

4. An animal feeding operation which is constructed or expanded within the corporate limits of a city, or the area within a separation distance required pursuant to this part, if the city approves a waiver which shall be memorialized in writing. The written waiver becomes effective only upon recording the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The filed waiver shall preclude enforcement by the state of this part as it relates to the animal feeding operation structure. However, this subsection shall not affect a separation distance required between residences, educational institutions, commercial enterprises, bona fide religious institutions, or public use areas, as provided in this part.

5. An animal feeding operation structure which is located within any distance from a residence, educational institution, commercial enterprise, bona fide religious institution, city, or public use area, if the residence, educational institution, commercial enterprise, or bona fide religious institution was constructed or expanded, or the boundaries of the city or public use area were expanded, after the date that the animal feeding operation was established. The date the animal feeding operation was established is the date on which the animal feeding operation com-

menced operating. A change in ownership or expansion of the animal feeding operation shall not change the established date of operation.

95 Acts, ch 195, §19
NEW section

455B.166 through 455B.170 Reserved.

455B.171 Definitions.

When used in this part 1 of division III, unless the context otherwise requires:

1. "Abandoned well" means a water well which is no longer in use or which is in such a state of disrepair that continued use for the purpose of accessing groundwater is unsafe or impracticable.

2. "Animal feeding operation" means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for forty-five days or more in any twelve-month period, and all structures used for the storage of manure from animals in the animal feeding operation. Two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common area or system for manure disposal. An animal feeding operation does not include a livestock market as defined in section 455B.161.

3. "Animal weight capacity" means the same as defined in section 455B.161.

4. "Confinement feeding operation" means the same as defined in section 455B.161.

5. "Construction" of a water well means the physical act or process of making the water well including, but not limited to, siting, excavation, construction, and the installation of equipment and materials necessary to maintain and operate the well.

6. "Contractor" means a person engaged in the business of well construction or reconstruction or other well services.

7. "Disposal system" means a system for disposing of sewage, industrial waste and other wastes and includes sewer systems, treatment works, point sources and dispersal systems.

8. "Effluent standard" means any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, radiological and other constituents which are discharged from point sources into any water of the state including an effluent limitation, a water quality related effluent limitation, a standard of performance for a new source, a toxic effluent standard or other limitation.

9. "Federal Water Pollution Control Act" means the federal Water Pollution Control Act of 1972, Pub. L. No. 92-500, as published in 33 U.S.C. §§ 1251-1376, as amended through December 31, 1985.

10. "Industrial waste" means any liquid, gaseous, radioactive, or solid waste substance resulting from any process of industry, manufacturing, trade or business or from the development of any natural resource.

11. "Manure" means the same as defined in section 455B.161.

12. "Manure sludge" means the solid or semisolid residue produced during the treatment of manure in an anaerobic lagoon.

13. "Maximum contaminant level" means the maximum permissible level of any physical, chemical, biological or radiological substance in water which is delivered to any user of a public water supply system.

14. "New source" means any building, structure, facility or installation, from which there is or may be the discharge of a pollutant, the construction of which is commenced after the publication of proposed federal rules prescribing a standard of performance which will be applicable to such source, if such standard is promulgated.

15. "Other waste" means heat, garbage, municipal refuse, lime, sand, ashes, offal, oil, tar, chemicals and all other wastes which are not sewage or industrial waste.

16. "Person" means any agency of the state or federal government or institution thereof, any municipality, governmental subdivision, interstate body, public or private corporation, individual, partnership, or other entity and includes any officer or governing or managing body of any municipality, governmental subdivision, interstate body, or public or private corporation.

For the purpose of imposing liability for violation of a section of this part, or a rule or regulation adopted by the department of natural resources under this part, "person" does not include a person who holds indicia of ownership in contaminated property from which prohibited discharges, deposits, or releases of pollutants into any water of the state have been or are evidenced, if the person has satisfied the requirements of section 455B.381, subsection 7, unnumbered paragraph 2, with respect to the contaminated property, regardless of whether the department has determined that the contaminated property constitutes a hazardous condition site.

17. "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

18. "Pollutant" means sewage, industrial waste or other waste.

19. "Private sewage disposal system" means a system which provides for the treatment or disposal of domestic sewage from four or fewer dwelling units or the equivalent of less than sixteen individuals on a continuing basis.

20. "Private water supply" means any water supply for human consumption which has less than fifteen service connections and regularly serves less than twenty-five individuals.

21. "Production capacity" means the amount of potable water which can be supplied to the distribution system in a twenty-four-hour period.

22. "Public water supply system" means a system for the provision to the public of piped water for

human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. The term includes any source of water and any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

23. "Reconstruction" of a water well means replacement or removal of all or a portion of the casing of the water well.

24. "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with any effluent standard, water quality standard, or any other requirement of this part of this division or any rule promulgated pursuant thereto.

25. "Semi-public sewage disposal system" means a system for the treatment or disposal of domestic sewage which is not a private sewage disposal system and which is not owned by a city, a sanitary sewer district, or a designated and approved management agency under section 1288 of the federal Water Pollution Control Act (33 U.S.C. § 1288).

26. "Sewage" means the water-carried waste products from residences, public buildings, institutions, or other buildings, including the bodily discharges from human beings or animals together with such ground water infiltration and surface water as may be present.

27. "Sewer extension" means pipelines or conduits constituting main sewers, lateral sewers or trunk sewers used for conducting pollutants to a larger interceptor sewer or to a point of ultimate disposal.

28. "Sewer system" means pipelines or conduits, pumping stations, force mains, vehicles, vessels, conveyances, injection wells, and all other constructions, devices and appliances appurtenant thereto used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal or disposal to any water of the state. To the extent that they are not subject to section 402 of the federal Water Pollution Control Act, ditches, pipes, and drains that serve only to collect, channel, direct, and convey nonpoint runoff from precipitation are not considered as sewer systems for the purposes of this Act.*

29. "Small animal feeding operation" means the same as defined in section 455B.161.

30. "Treatment works" means any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, or other works installed for the purpose of treating, stabilizing or disposing of sewage, industrial waste or other wastes.

31. "Viable" means a disposal system or a public water supply system which is self-sufficient and has the financial, managerial, and technical capability to reliably meet standards of performance on a long-term basis, as required by state and federal law, including the federal Water Pollution Control Act and the federal Safe Drinking Water Act.

32. "Water of the state" means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

33. "Water pollution" means the contamination or alteration of the physical, chemical, biological, or radiological integrity of any water of the state by a source resulting in whole or in part from the activities of humans, which is harmful, detrimental, or injurious to public health, safety, or welfare, to domestic, commercial, industrial, agricultural, or recreational use or to livestock, wild animals, birds, fish, or other aquatic life.

34. "Water supply distribution system extension" means any extension to the pipelines or conduits which carry water directly from the treatment facility, source or storage facility to the consumer's service connection.

35. "Water well" means an excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, or extracting water from or injecting water into the aquifer. "Water well" does not include an open ditch or drain tiles or an excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried.

95 Acts, ch 195, §20

*See 76 Acts, ch 1204

NEW subsections 2-4 and former subsections 2-7 renumbered as 5-10
NEW subsections 11 and 12 and former subsections 8-23 renumbered as 13-28

NEW subsection 29 and former subsections 24-29 renumbered as 30-35

455B.173 Duties.

The commission shall:

1. Develop comprehensive plans and programs for the prevention, control and abatement of water pollution.

2. Establish, modify, or repeal water quality standards, pretreatment standards and effluent standards. The effluent standards may provide for maintaining the existing quality of the water of the state where the quality thereof exceeds the requirements of the water quality standards.

If the federal environmental protection agency has promulgated an effluent standard or pretreatment standard pursuant to section 301, 306 or 307 of the federal Water Pollution Control Act, a pretreatment or effluent standard adopted pursuant to this section shall not be more stringent than the federal effluent or pretreatment standard for such source. This section may not preclude the establishment of a more restrictive effluent limitation in the permit for a particular point source if the more restrictive effluent limitation is necessary to meet water quality standards, the establishment of an effluent standard for a source or class of sources for which the federal environmental protection agency has not promulgated standards pursuant to section 301, 306 or 307

of the federal Water Pollution Control Act. Except as required by federal law or regulation, the commission shall not adopt an effluent standard more stringent with respect to any pollutant than is necessary to reduce the concentration of that pollutant in the effluent to the level due to natural causes, including the mineral and chemical characteristics of the land, existing in the water of the state to which the effluent is discharged. Notwithstanding any other provision of this part of this division, any new source, the construction of which was commenced after October 18, 1972, and which was constructed as to meet all applicable standards of performance for the new source or any more stringent effluent limitation required to meet water quality standards, shall not be subject to any more stringent effluent limitations during a ten-year period beginning on the date of completion of construction or during the period of depreciation or amortization of the pollution control equipment for the facility for the purposes of section 167 and 169 or both sections of the Internal Revenue Code, whichever period ends first.

3. Establish, modify, or repeal rules relating to the location, construction, operation, and maintenance of disposal systems and public water supply systems and specifying the conditions, including the viability of a system pursuant to section 455B.174, under which the director shall issue, revoke, suspend, modify, or deny permits for the operation, installation, construction, addition to, or modification of any disposal system or public water supply system, or for the discharge of any pollutant. The rules specifying the conditions under which the director shall issue permits for the construction of an electric power generating facility subject to chapter 476A shall provide for issuing a conditional permit upon the submission of engineering descriptions, flow diagrams and schematics that qualitatively and quantitatively identify effluent streams and alternative disposal systems that will provide compliance with effluent standards or limitations.

No rules shall be adopted which regulate the hiring or firing of operators of disposal systems or public water supply systems except rules which regulate the certification of operators as to their technical competency.

A publicly owned treatment works whose discharge meets the final effluent limitations which were contained in its discharge permit on the date that construction of the publicly owned treatment works was approved by the department shall not be required to meet more stringent effluent limitations for a period of ten years from the date the construction was completed and accepted but not longer than twelve years from the date that construction was approved by the department.

4. Co-operate with other state or interstate water pollution control agencies in establishing standards, objectives, or criteria for the quality of interstate waters originating or flowing through this state.

5. Establish, modify or repeal rules relating to drinking water standards for public water supply

systems. Such standards shall specify maximum contaminant levels or treatment techniques necessary to protect the public health and welfare. The drinking water standards must assure compliance with federal drinking water standards adopted pursuant to the federal Safe Drinking Water Act.

6. a. Adopt rules relating to inspection, monitoring, recordkeeping, and reporting requirements for the owner or operator of any public water supply or any disposal system or of any source which is an industrial user of a publicly or privately owned disposal system.

b. Adopt rules which require each public water system regulated under chapter 455B to test the source water of that supply for the presence of synthetic organic chemicals and pesticides every three years. The rules shall enumerate the synthetic organic chemicals and pesticides, but not more than ten of each, for which the samples are to be tested; shall specify the approved analytical methods for conducting the analysis of water samples; and shall require the reporting of the analytical test results to the department. Priority for testing in the first year shall be those public water supplies for which none of the specified contaminants have been analyzed within the past five years. All of the laboratory analysis and data management shall be conducted by the center for health effects of environmental contamination. Sample collection shall be conducted using a standard sampling protocol by personnel within the department and the center for health effects of environmental contamination in conjunction with other ongoing field activities. Samples from private wells and samples from privately owned public water supplies shall be allowed to undergo the same analysis. The cost for the analysis provided for samples from private wells and privately owned public water supplies shall not exceed one hundred ninety-five dollars for the first year of testing. The department shall submit a report to the general assembly, by September 1 of each year, of the findings of the tests and the conclusions which may be drawn from the tests.

7. Adopt a statewide plan for the provision of safe drinking water under emergency circumstances. All public agencies, as defined in chapter 28E, shall co-operate in the development and implementation of the plan. The plan shall detail the manner in which the various state and local agencies shall participate in the response to an emergency. The department may enter into any agreement, subject to approval of the commission, with any state agency or unit of local government or with the federal government which may be necessary to establish the role of such agencies in regard to the plan. This plan shall be coordinated with disaster emergency plans.

8. Formulate and adopt specific and detailed statewide standards pursuant to chapter 17A for review of plans and purifications and the construction of sewer systems and water supply distribution systems and extensions to such systems not later than October 1, 1977. The standards shall be based on criteria contained in the "Recommended Stan-

Standards for Sewage Works" and *Recommended Standards for Water Works*" (Ten States Standards) as adopted by the Great Lakes-Upper Mississippi River board of state sanitary engineers, design manuals published by the department, applicable federal guidelines and standards, standard textbooks, current technical literature and applicable safety standards. The material standards for polyvinyl chloride pipe shall not exceed the specifications for polyvinyl chloride pipe in designations D-1784-69, D-2241-73, D-2564-76, D-2672-76, D-3036-73 and D-3139-73 of the American society of testing and material. The rules adopted which directly pertain to the construction of sewer systems and water supply distribution systems and the review of plans and specifications for such construction shall be known respectively as the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems and shall be applicable in each governmental subdivision of the state. Exceptions shall be made to the standards so formulated only upon special request to and receipt of permission from the department. The department shall publish the standards and make copies of such standards available to governmental subdivisions and to the public.

9. Adopt, modify or repeal rules relating to the construction and reconstruction of water wells, the proper abandonment of wells, and the registration or certification of water well contractors. The rules shall include those necessary to protect the public health and welfare, and to protect the waters of the state. The rules may include, but are not limited to, establishing fees for registration or certification of water well contractors, requiring the submission of well driller's logs, formation samples or well cuttings, water samples, information on test pumping and requiring inspections. Fees shall be based upon the reasonable cost of conducting the water well contractor registration or certification program.

10. Adopt, modify, or repeal rules relating to the awarding of grants to counties for the purpose of carrying out responsibilities pursuant to section 455B.172 relative to private water supplies and private sewage disposal facilities.

11. Adopt, modify, or repeal rules relating to the business plan which disposal systems and public water supply systems must file with the department pursuant to section 455B.174, and adopt, modify, or repeal rules establishing a methodology and timetable by which nonviable systems shall take action to become viable or make alternative arrangements in providing treatment or water supply services.

12. Adopt rules for the issuance of a single general permit, after notice and opportunity for a public hearing. The single general permit shall cover numerous facilities to the extent that they are representative of a class of facilities which can be identified and conditioned by a single permit.

13. Adopt, modify, or repeal rules relating to the construction or operation of animal feeding operations. The rules shall include, but are not limited to, minimum manure control requirements, require-

ments for obtaining permits, and departmental evaluations of animal feeding operations. The department shall not require that a person obtain a permit for the construction of an animal feeding operation structure, if the structure is part of a small animal feeding operation. The department shall collect an indemnity fee as provided in section 204.3 prior to the issuance of a construction permit. The department shall not approve a permit for the construction of three or more animal feeding operation structures unless the applicant files a statement approved by a professional engineer registered pursuant to chapter 542B certifying that the construction of the animal feeding operation structure will not impede the drainage through established drainage tile lines which cross property boundary lines unless measures are taken to reestablish the drainage prior to completion of construction. The department shall deposit moneys collected in indemnity fees in the manure storage indemnity fund created in section 204.2. The department shall issue a permit for an animal feeding operation, if an application is submitted according to procedures required by the department, and the application meets standards established by the department, regardless of whether the animal feeding operation is required to obtain such a permit. An applicant for a construction permit shall not begin construction at the location of a site planned for the construction of an animal feeding operation structure, until the person has been granted a permit for the construction of the structure by the department. The department shall make a determination regarding the approval or denial of a permit within sixty days from the date that the department receives a completed application for a permit. However, the sixty-day requirement shall not apply to an application, if the applicant is not required to obtain a permit in order to construct an animal feeding operation structure or to operate an animal feeding operation. The department shall deliver a copy or require the applicant to deliver a copy of the application for a construction permit to the county board of supervisors in the county where the confinement feeding operation or confinement feeding operation structure subject to the permit is to be located. The department shall not approve the application or issue a construction permit until thirty days following delivery of the application to the county board of supervisors. The department shall consider comments from the county board of supervisors, regarding compliance by the applicant with the legal requirements for the construction of the confinement feeding operation structure as provided in this chapter, and rules adopted by the department pursuant to this chapter, if the comments are delivered to the department within fourteen days after receipt of the application by the county board of supervisors. Prior to granting a permit to a person for the construction of an animal feeding operation, the department may require the installation and operation of a hydrological monitoring system for an exclusively earthen manure storage structure, if, after

an on-site inspection, the department determines that the site presents an extraordinary potential for groundwater pollution. A person shall not obtain a permit for the construction of a confinement feeding operation, unless the person develops a manure management plan as provided in section 455B.203. The department shall not issue a permit to a person under this subsection if an enforcement action by the department, relating to a violation of this chapter concerning a confinement feeding operation in which the person has an interest, is pending. The department shall not issue a permit to a person under this subsection for five years after the date of the last violation committed by a person or confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under section 455B.191. The department shall conduct an annual review of each confinement feeding operation which is a habitual violator and each confinement feeding operation in which a habitual violator holds a controlling interest. The department shall notify persons classified as habitual violators of their classification, additional restrictions imposed upon the persons pursuant to the classification, and special civil penalties that may be imposed upon the persons. The notice shall be sent to the persons by certified mail.

95 Acts, ch 61, §1; 95 Acts, ch 195, §21, 22

Animal agriculture consulting organization to consult and make recommendations relating to regulation of animal feeding operations; future repeal of authorization; 95 Acts, ch 195, §37

Subsection 3, unnumbered paragraph 1 amended

NEW subsections 12 and 13

455B.183A Water quality protection fund.

1. A water quality protection fund is created in the state treasury under the control of the department. The fund consists of moneys appropriated to the fund by the general assembly, moneys deposited into the fund from fees described in subsection 2, and other moneys available to and obtained or accepted by the department from the United States government or private sources for placement in the fund. The fund is divided into two accounts, including the administration account and the public water supply system account. Moneys in the administration account shall be used for purposes of carrying out the provisions of this division, which relate to the administration, regulation, and enforcement of the federal Safe Drinking Water Act. Moneys in the public water supply system account shall be used to support the program to assist supply systems, as provided in section 455B.183B.

2. The commission shall adopt fees as required pursuant to section 455B.105 for permits required for public water supply systems as provided in sections 455B.174 and 455B.183. Fees paid pursuant to this section shall not be subject to the sales or services tax. The fees shall be for each of the following:

a. The construction, installation, or modification of a public water supply system. The amount of the fees may be based on the type of system being constructed, installed, or modified.

b. The operation of a public water supply system, including any part of the system. The commission shall adopt a fee schedule which shall be based on the total number of persons served by public water supply systems in this state. However, a public water supply system shall be assessed a fee of at least twenty-five dollars. A public water supply system not owned or operated by a community and serving a transient population shall be assessed a fee of twenty-five dollars. The commission shall calculate all fees in the schedule to produce total revenues equaling three hundred fifty thousand dollars for each fiscal year, commencing with the fiscal year beginning July 1, 1995, and ending June 30, 1996. For each fiscal year, one-half of the fees shall be deposited into the administration account and one-half of the fees shall be deposited into the public water supply system account. By May 1 of each year, the department shall estimate the total revenue expected to be collected from the overpayment of fees, which are all fees in excess of the amount of the total revenues which are expected to be collected under the current fee schedule, and the total revenue expected to be collected from the payment of fees during the next fiscal year. The commission shall adjust the fees if the estimate exceeds the amount of revenue required to be deposited in the fund pursuant to this paragraph.

3. Moneys in the fund are subject to an annual audit by the auditor of state. The fund is subject to warrants by the director of revenue and finance, drawn upon the written requisition of the department.

4. Section 8.33 does not apply to moneys in the fund. Moneys earned as income, including interest from the fund, shall remain in the fund until expended.

5. On or before November 15 of each fiscal year, the department shall transmit to the department of management and the legislative fiscal bureau information regarding the fund and accounts, including all of the following:

a. The balance of unobligated and unencumbered moneys in each account as of November 1.

b. A summary of revenue deposited in and expenditures from each account during the current fiscal year.

c. Estimates of revenues expected to be deposited into the public water supply system account during the current fiscal year, and an estimate of the expected balance of unobligated and unencumbered moneys in the account on June 30 of the current fiscal year.

95 Acts, ch 216, §39

Subsection 2, paragraph b amended

455B.191 Penalties — burden of proof.

1. Any person who violates any provision of part 1 of division III of this chapter or any permit, rule, standard, or order issued under part 1 of division III of this chapter shall be subject to a civil penalty not to exceed five thousand dollars for each day of such violation.

2. Any person who negligently or knowingly violates section 455B.183 or section 455B.186 or any condition or limitation included in any permit issued under section 455B.183, or who negligently or knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which the person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal and state requirements or permits, negligently or knowingly causes a treatment works to violate any water quality standard, effluent standard, pretreatment standard or condition of a permit issued to the treatment works pursuant to section 455B.183 is guilty of a serious misdemeanor for a negligent violation and is guilty of an aggravated misdemeanor for a knowing violation. A conviction for a negligent violation is punishable by a fine of not more than twenty-five thousand dollars for each day of violation or by imprisonment for not more than one year, or both; however, if the conviction is for a second or subsequent violation committed by a person under this subsection, the conviction is punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or both. A conviction for a knowing violation is punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or both; however, if the conviction is for a second or subsequent violation committed by a person under this subsection, the conviction is punishable by a fine of not more than one hundred thousand dollars for each day of violation or by imprisonment for not more than five years, or both. As used in this section, "hazardous substance" means hazardous substance as defined in section 455B.381 or section 455B.411.

3. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under part 1 of division III of this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under part 1 of division III of this chapter or by any permit, rule, regulation, or order issued under part 1 of division III of this chapter, shall upon conviction be punished by a fine of not more than ten thousand dollars or by imprisonment in the county jail for not more than six months or by both such fine and imprisonment.

4. The attorney general shall, at the request of the director with approval of the commission, institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of this chapter or to obtain compliance with the provisions of part 1 of division III of this chapter or any rules promulgated or any provision of any permit issued under part 1 of division III of this chapter. In any such action, any previous findings of fact of the director or the commission after notice and hearing

shall be conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

5. In all proceedings with respect to any alleged violation of the provisions of this part 1 of division III or any rule established by the commission or the department, the burden of proof shall be upon the commission or the department except in an action for contempt as provided in section 455B.182.

6. If the attorney general has instituted legal proceedings in accordance with this section, all related issues which could otherwise be raised by the alleged violator in a proceeding for judicial review under section 455B.178 shall be raised in the legal proceedings instituted in accordance with this section.

7. The department may impose a civil penalty upon a habitual violator which shall not exceed twenty-five thousand dollars for each day the violation continues. The increased penalty may be assessed for each violation committed subsequent to the violation which results in classifying the person as a habitual violator. A person shall be classified as a habitual violator, if the person has committed three or more violations as described in this subsection. To be considered a violation that is applicable to a habitual violator determination, a violation must have been committed on or after January 1, 1995. In addition, each violation must have been referred to the attorney general for legal action under this chapter, and each violation must be subject to the assessment of a civil penalty or a court conviction, in the five years prior to the date of the latest violation provided in this subsection, counting any violation committed by a confinement feeding operation in which the person holds a controlling interest. A person shall be removed from the classification of habitual violator on the date on which the person and all confinement feeding operations in which the person holds a controlling interest have committed less than three violations described in this subsection for the prior five years. For purposes of counting violations, a continuing and uninterrupted violation shall be considered as one violation. Different types of violations shall be counted as separate violations regardless of whether the violations were committed during the same period. A violation must relate to one of the following:

- a. The construction or operation of a confinement feeding operation structure or anaerobic lagoon which is part of a confinement feeding operation, or the installation or use of a related pollution control device or practice, for which the person must obtain a permit, in violation of this chapter, or rules adopted by the department, including the terms or conditions of the permit.
- b. Intentionally making a false statement or misrepresenting information to the department as part of an application for a construction permit for a confinement feeding operation structure or anaerobic lagoon which is part of a confinement feeding operation, or the installation of a related pollution control device or practice for which the person must obtain a construction permit.

c. Failing to obtain a permit or approval by the department in violation of this chapter or departmental rule which requires a permit to construct or operate a confinement feeding operation or use a confinement feeding operation structure, anaerobic lagoon, or a pollution control device or practice which is part of a confinement feeding operation.

d. Operating a confinement feeding operation, including a confinement feeding operation structure or anaerobic lagoon which is part of a confinement feeding operation, or a related pollution control device or practice, which causes pollution to the waters of the state, if the pollution was caused intentionally, or caused by a failure to take measures required to abate the pollution which resulted from an act of God.

e. Failing to submit a manure management plan as required pursuant to section 455B.203, or operating a confinement feeding operation without having a manure management plan approved by the department.

This subsection shall not apply unless the department of natural resources has previously notified the person of the person's classification as a habitual violator as provided in section 455B.173.

8. Moneys assessed and collected in civil penalties and interest earned on civil penalties, arising out of a violation involving an animal feeding operation, shall be deposited in the manure storage indemnity fund as created in section 204.2.

95 Acts, ch 195, §23

NEW subsections 7 and 8

455B.193 through 455B.200 Reserved.

ANIMAL FEEDING OPERATIONS

Animal agriculture consulting organization to consult and make recommendations to department; future repeal of authorization;

95 Acts, ch 195, §37

Pilot study of ten animal feeding operations and their manure management and disposal systems; report;

95 Acts, ch 195, §41

455B.201 Minimum manure control.

1. A confinement feeding operation shall retain all manure produced by the operation between periods of manure disposal. A confinement feeding operation shall not discharge manure directly into water of the state or into a tile line that discharges directly into water of the state.

2. Manure from an animal feeding operation shall be disposed of in a manner which will not cause surface water or groundwater pollution. Disposal in accordance with the provisions of state law, including this chapter, rules adopted pursuant to the provisions of state law, including this chapter, guidelines adopted pursuant to this chapter, and section 159.27, shall be deemed as compliance with this requirement.

3. The owner of the confinement feeding operation which discontinues the use of the operation shall remove all manure from related confinement feeding operation structures used to store manure, by a date specified in an order issued to the operation by the department, or six months following the date that the

confinement feeding operation is discontinued, whichever is earlier.

4. A person shall not apply manure by spray irrigation equipment, except as provided by rules which shall be adopted by the department pursuant to chapter 17A.

95 Acts, ch 195, §24

NEW section

455B.202 Reserved.

455B.203 Manure management plan — requirements.

1. In order to receive a permit for the construction of a confinement feeding operation as provided in section 455B.173, a person shall submit a manure management plan to the department together with the application for a construction permit.

2. A manure management plan shall include all of the following:

a. Calculations necessary to determine the land area required for the application of manure from a confinement feeding operation based on nitrogen use levels in order to obtain optimum crop yields according to a crop schedule specified in the plan, and according to requirements adopted by the department after receiving recommendations from the animal agriculture consulting organization provided for in 1995 Iowa Acts, chapter 195, section 37.

b. Manure nutrient levels as determined by either manure testing or accepted standard manure nutrient values.

c. Manure application methods, timing of manure application, and the location of the manure application.

d. If the location of the application is on land other than land owned by the person applying for the construction permit, the plan shall include a copy of each written agreement executed between the person and the landowner where the manure will be applied.

e. An estimate of the annual animal production and manure volume or weight produced by the confinement feeding operation.

f. Methods, structures, or practices to prevent or diminish soil loss and potential surface water pollution.

g. Methods or practices to minimize potential odors caused by the application of manure by the use of spray irrigation equipment.

3. A person classified as a habitual violator or a confinement feeding operation in which a habitual violator owns a controlling interest, as provided in section 455B.191, shall submit a manure management plan to the department on an annual basis, which must be approved by the department for the following year of operation.

4. A person receiving a permit for the construction of a confinement feeding operation shall maintain a current manure management plan and maintain records sufficient to demonstrate compliance with the manure management plan. Chapter 22 shall not apply to the records which shall be kept

confidential by the department and its agents and employees. The contents of the records are not subject to disclosure except as follows:

- a. Upon waiver by the person receiving the permit.
- b. In an action or administrative proceeding commenced under this chapter. Any hearing related to the action or proceeding shall be closed.
- c. When required by subpoena or court order.

5. The department may inspect the confinement feeding operation at any time during normal working hours, and may inspect records required to be maintained as part of the manure management plan. The department shall regularly inspect a confinement feeding operation if the operation or a person holding a controlling interest in the operation is classified as a habitual violator pursuant to section 455B.191. The department shall assess and the confinement feeding operation shall pay the actual costs of the inspection. However, in order to access the operation, the departmental inspector must comply with standard disease control restrictions customarily required by the operation. The department shall comply with section 455B.103 in conducting an investigation of the premises where the animals are kept.

6. A person submitting a manure management plan who is found in violation of the terms and conditions of the plan shall not be subject to an enforcement action other than assessment of a civil penalty pursuant to section 455B.191.

95 Acts, ch 195, §25

Deadline for adoption of rules; notice to persons required to develop plan; delayed implementation of certain requirements; 95 Acts, ch 195, §39, 40
NEW section

455B.204 Distance requirements.

1. An animal feeding operation structure shall be located at least five hundred feet away from the surface intake of an agricultural drainage well or known sinkhole, and at least two hundred feet away from a lake, river, or stream located within the territorial limits of the state, any marginal river area adjacent to the state, which can support a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding. However, no distance separation is required between a location or object and a farm pond or privately owned lake, as defined in section 462A.2.

All distances between locations or objects shall be measured from their closest points, as provided by rules adopted by the department.

2. A person shall not dispose of manure closer to a designated area than provided in section 159.27.

95 Acts, ch 195, §26

NEW section

455B.205 through 455B.210 Reserved.

455B.291 Definitions.

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

1. "Authority" means the Iowa finance authority established in section 16.2.

2. "Clean Water Act" means the federal Water Pollution Control Act of 1972, Pub. L. No. 92-500, as amended by the Water Quality Act of 1987, Pub. L. No. 100-4, as published in 33 U.S.C. §§ 1251-1376.

3. "Cost" means all costs, charges, expenses, or other indebtedness incurred by a municipality and determined by the director as reasonable and necessary for carrying out all works and undertakings necessary or incidental to the accomplishment of any project.

4. "Municipality" means a city, county, sanitary district, state agency, or other governmental body or corporation empowered to provide sewage collection and treatment services, or any combination of two or more of the governmental bodies or corporations acting jointly, in connection with a project.

5. "Program" means the Iowa sewage treatment works financing program created pursuant to section 455B.294.

6. "Project" means the acquisition, construction, reconstruction, extension, equipping, improvement, or rehabilitation of any works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner including treatment works as defined in section 212 of the Clean Water Act, or the implementation and development of management programs established under sections 319 and 320 of the Clean Water Act.

7. "Sewage treatment works administration fund" or "administration fund" means the sewage treatment works administration fund established in section 455B.295.

8. "Sewage treatment works revolving loan fund" or "revolving loan fund" means the sewage treatment works revolving loan fund established in section 455B.295.

95 Acts, ch 98, §1
Subsection 4 amended

455B.304 Rules established.

1. The commission shall establish rules for the proper administration of this part 1 of division IV which shall reflect and accommodate as far as is reasonably possible the current and generally accepted methods and techniques for treatment and disposition of solid waste which will serve the purposes of this part, and which shall take into consideration the factors, including others which it deems proper, such as existing physical conditions, topography, soils and geology, climate, transportation, and land use, and which shall include but are not limited to rules relating to the establishment and location of sanitary disposal projects, sanitary practices, inspection of sanitary disposal projects, collection of solid waste, disposal of solid waste, pollution controls, the issuance of permits, approved methods of private disposition of solid waste, the general operation and maintenance of sanitary disposal projects, and the implementation of this part.

2. The commission shall adopt rules that allow the use of wet or dry sludge from publicly owned

treatment works for land application. A sale of wet or dry sludge for the purpose of land application shall be accompanied by a written agreement signed by both parties which contains a general analysis of the contents of the sludge. The heavy metal content of the sludge shall not exceed that allowed by rules of the commission. An owner of a publicly owned treatment works which sells wet or dry sludge is not subject to criminal liability for acts or omissions in connection with a sale, and is not subject to any action by the purchaser to recover damages for harm to person or property caused by sludge that is delivered pursuant to a sale unless it is a result of a violation of the written agreement or if the heavy metal content of the sludge exceeds that allowed by rules of the commission. Nothing in this section shall provide immunity to any person from action by the department pursuant to section 455B.307. The rules promulgated under this subsection shall be generally consistent with those rules of the department existing on January 1, 1982, regarding the land application of municipal sewage sludge except that they may provide for different methods of application for wet sludge and dry sludge.

3. The commission shall adopt rules prohibiting the disposal of uncontained liquid waste in a sanitary landfill. The rules shall prohibit land burial or disposal by land application of wet sewer sludge at a sanitary landfill.

4. The commission shall adopt rules requiring that each sanitary disposal project established pursuant to section 455B.302 and permitted pursuant to section 455B.305 install and maintain a sufficient number of groundwater monitoring wells to adequately determine the quality of the groundwater and the impact the sanitary disposal project, if any, is having on the groundwater adjacent to the sanitary disposal project site.

5. The commission shall adopt rules requiring a schedule of monitoring of the quality of groundwater adjacent to the sanitary disposal project from the groundwater monitoring wells installed in accordance with this section during the period the sanitary disposal project is in use. Schedules of monitoring may be varied in consideration of the types of sanitary disposal practices, hydrologic and geologic conditions, construction and operation characteristics, and volumes and types of wastes handled at the sanitary disposal project site.

6. The commission shall, by rule, require continued monitoring of groundwater pursuant to this section for a period of thirty years after the sanitary disposal project is closed. The commission may prescribe a lesser period of monitoring duration and frequency in consideration of the potential or lack thereof for groundwater contamination from the sanitary disposal project. The commission may extend the thirty-year monitoring period on a site-specific basis by adopting rules specifically addressing additional monitoring requirements for each sanitary disposal project for which the monitoring period is to be extended.

7. The commission shall adopt rules which may require the installation of shafts to relieve the accumulation of gas in a sanitary disposal project.

8. The commission shall adopt rules which establish closure, postclosure, leachate control and treatment, and financial assurance standards and requirements and which establish minimum levels of financial responsibility for sanitary disposal projects.

9. The commission shall adopt rules which establish the minimum distance between tiling lines and a sanitary landfill in order to assure no adverse effect on the groundwater.

10. The commission shall adopt rules for the distribution of grants to cities, counties, central planning agencies, and public or private agencies working in cooperation with cities or counties, for the purpose of solid waste management. The rules shall base the awarding of grants on a project's reflection of the solid waste management policy and hierarchy established in section 455B.301A, the proposed amount of local matching funds, and community need.

11. By July 1, 1990, a sanitary landfill disposal project operating with a permit shall have a trained, tested, and certified operator. A certification program shall be devised or approved by rule of the department.

12. The commission shall adopt rules for the certification of operators of solid waste incinerators. The criteria for certification shall include, but is not limited to, an operator's technical competency and operation and maintenance of solid waste incinerators.

13. Notwithstanding the provisions of this chapter regarding the requirement of the equipping of a sanitary landfill with a leachate control system and the establishment and continuation of a postclosure account, the department shall adopt rules which provide for an exemption from the requirements to equip a publicly owned sanitary landfill with a leachate control system and to establish and maintain a postclosure account if the sanitary landfill operator is a public agency, if the sanitary landfill has closed or will close by July 1, 1992, and will no longer accept waste for disposal after that date, and if at the time of closure of the sanitary landfill monitoring of the groundwater does not reveal the presence of leachate. The department shall require postclosure groundwater monitoring and shall establish the requirements for the implementation of leachate collection and control in cases in which leachate is found during postclosure monitoring. The department shall provide for a closure completion period following the date of closure of a sanitary landfill. Notwithstanding the provisions of this paragraph, the public agency shall retain financial responsibility for closure and postclosure requirements applicable to sanitary disposal projects.

14. The commission shall adopt rules providing for the land application of soils resulting from the remediation of underground storage tank releases in the state.

15. The commission shall adopt rules which require all sanitary landfills in which the tonnage fee

pursuant to section 455B.310 is imposed, to install scales by January 1, 1994.

16. The commission shall adopt rules which prohibit the land application of petroleum contaminated soils on flood plains.

17. The commission shall adopt rules to establish a special waste authorization program. For purposes of this subsection, "special waste" means any industrial process waste, pollution control waste, or toxic waste which presents a threat to human health or the environment or a waste with inherent properties which make the disposal of the waste in a sanitary landfill difficult to manage. Special waste does not include domestic, office, commercial, medical, or industrial waste that does not require special handling or limitations on its disposal. Special waste does not include hazardous wastes which are regulated under the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6921-6934, hazardous wastes as defined in section 455B.411, subsection 3, or hazardous wastes included in the list compiled in accordance with section 455B.464.

18. The commission shall adopt rules for the issuance of a single general permit, after notice and opportunity for a public hearing. The single general permit shall cover numerous facilities to the extent that they are representative of a class of facilities which can be identified and conditioned by a single permit.

95 Acts, ch 61, §2; 95 Acts, ch 215, §3

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

NEW subsection 18

455B.310 Tonnage fee imposed — appropriations — exemptions.

1. Except as provided in subsection 3, the operator of a sanitary landfill shall pay a tonnage fee to the department for each ton or equivalent volume of solid waste received and disposed of at the sanitary landfill during the preceding reporting period. The department shall determine by rule the volume which is equivalent to a ton of waste.

2. The tonnage fee is four dollars and twenty-five cents per ton of solid waste. Of that amount, ninety-five cents of the tonnage fee shall be retained by a city, county, or public or private agency and used as follows:

a. To meet comprehensive planning requirements of section 455B.306, the development of a closure or postclosure plan, the development of a plan for the control and treatment of leachate including the preparation of facility plans and detailed plans and specifications, and the preparation of a financial plan.

b. Forty-five cents of the retained funds shall be used for implementing waste volume reduction and recycling requirements of comprehensive plans filed under section 455B.306. The funds shall be distributed to a city, county, or public agency served by the sanitary disposal project. Fees collected by a private agency which provides for the final disposal of solid waste shall be remitted to the city, county, or public

agency served by the sanitary disposal project. However, if a private agency is designated to develop and implement the comprehensive plan pursuant to section 455B.306, fees under this paragraph shall be retained by the private agency.

c. For other environmental protection and compliance activities.

d. Each sanitary landfill owner or operator shall submit a return to the department identifying the use of all fees retained under this subsection including the manner in which the fees were distributed. The return shall be submitted concurrently with the return required under subsection 5.

3. Solid waste disposal facilities with special provisions which limit the site to disposal of construction and demolition waste, landscape waste, coal combustion waste, foundry sand, and solid waste materials approved by the department for lining or capping, or for construction berms, dikes, or roads in a sanitary disposal project or sanitary landfill are exempt from the tonnage fees imposed under this section. However, solid waste disposal facilities under this subsection are subject to the fees imposed pursuant to section 455B.105, subsection 11, paragraph "a". Notwithstanding the provisions of section 455B.105, subsection 11, paragraph "b", the fees collected pursuant to this subsection shall be used by the department for the regulation of these solid waste disposal facilities.

4. All tonnage fees received by the department under this section shall be deposited in the solid waste account of the groundwater protection fund created under section 455E.11.

5. Fees imposed by this section shall be paid to the department on a quarterly basis with payment due by no more than ninety days following the quarter during which the fees were collected. The payment shall be accompanied by a return which shall identify the amount of fees to be allocated to the landfill alternative financial assistance program, the amount of fees, in terms of cents per ton, retained for meeting waste reduction and recycling goals under section 455D.3, and additional fees imposed for failure to meet the twenty-five percent waste reduction and recycling goal under section 455D.3.

6. A person required to pay fees by this section who fails or refuses to pay the fees imposed by this section shall be assessed a penalty of two percent of the fee due for each month the fee is overdue. The penalty shall be paid in addition to the fee due.

7. Foundry sand used by a sanitary landfill as daily cover, road base, or berm material or for other purposes defined as beneficial uses by rule of the department is exempt from imposition of the tonnage fee under this section. Sanitary landfills shall use foundry sand as a replacement for earthen material, if the foundry sand is generated by a foundry located within the state and if the foundry sand is provided to the sanitary landfill at no cost to the sanitary landfill.

95 Acts, ch 80, §1

Section stricken and rewritten

455B.471 Definitions.

As used in this part unless the context otherwise requires:

1. "*Board*" means the Iowa comprehensive petroleum underground storage tank fund board.

2. "*Corrective action*" means an action taken to reduce, minimize, eliminate, clean up, control, or monitor a release to protect the public health and safety or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for purposes of repairing a leak or removal of a tank, removal of contaminated soil, disposal or processing of contaminated soil, cleansing of groundwaters or surface waters, natural biodegradation, institutional controls, and site management practices. Corrective action does not include replacement of an underground storage tank. Corrective action specifically excludes third-party liability.

3. "*Fund*" means the Iowa comprehensive petroleum underground storage tank fund.

4. "*Nonoperational storage tank*" means an underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after July 1, 1985.

5. "*Operator*" means a person in control of, or having responsibility for, the daily operation of the underground storage tank.

6. a. "*Owner*" means:

(1) In the case of an underground storage tank in use on or after July 1, 1985, a person who owns the underground storage tank used for the storage, use, or dispensing of regulated substances.

(2) In the case of an underground storage tank in use before July 1, 1985, but no longer in use on that date, a person who owned the tank immediately before the discontinuation of its use.

b. To the extent consistent with the federal Resource Conservation and Recovery Act, as amended to January 1, 1994, 42 U.S.C. § 6901 et seq., "*owner*" does not include a person who holds indicia of ownership in the underground storage tank or the tank site property if all of the following apply:

(1) The person holds indicia of ownership primarily to protect that person's security interest in the underground storage tank or tank site property, where such indicia of ownership was acquired either for the purpose of securing payment of a loan or other indebtedness, or in the course of protecting the security interest. The term "*primarily to protect that person's security interest*" includes but is not limited to ownership interests acquired as a consequence of that person exercising rights as a security interest holder in the underground storage tank or tank site property, where such exercise is necessary or appropriate to protect the security interest, to preserve the value of the collateral, or to recover a loan or indebtedness secured by such interest. The person holding indicia of ownership in the underground storage tank or tank site property and who acquires title or a right to title to such underground storage tank or tank site property upon default under the security arrangement, or at, or in lieu of, foreclosure, shall continue

to hold such indicia of ownership primarily to protect that person's security interest so long as subsequent actions taken by that person with respect to the underground storage tank or tank site property are intended to protect the collateral secured by the interest, and demonstrate that the person is seeking to sell or liquidate the secured property rather than holding the property for investment purposes.

(2) The person does not exhibit managerial control of, or managerial responsibility for, the daily operation of the underground storage tank or tank site property through the actual, direct, and continual or recurrent exercise of managerial control over the underground storage tank or tank site property in which that person holds a security interest, which managerial control materially divests the borrower, debtor, owner or operator of the underground storage tank or tank site property of such control.

(3) The person has taken no subsequent action with respect to the site which causes or exacerbates a release or threatened release of a hazardous substance.

7. "*Petroleum*" means petroleum, including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute).

8. "*Regulated substance*" means an element, compound, mixture, solution or substance which, when released into the environment, may present substantial danger to the public health or welfare or the environment. Regulated substance includes substances designated in 40 C.F.R., Parts 61 and 116, and section 401.15, and petroleum including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute). However, regulated substance does not include a substance regulated as a hazardous waste under the Resource Conservation and Recovery Act of 1976. Substances may be added or deleted as regulated substances by rule of the commission pursuant to section 455B.474.

9. "*Release*" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance, including petroleum, from an underground storage tank into groundwater, surface water, or subsurface soils.

10. "*Tank site*" means a tank or grouping of tanks within close proximity of each other located on the facility for the purpose of storing regulated substances.

11. "*Underground storage tank*" means one or a combination of tanks, including underground pipes connected to the tanks which are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes, is ten percent or more beneath the surface of the ground. Underground storage tank does not include:

a. Farm or residential tanks of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.

b. Tanks used for storing heating oil for consumptive use on the premises where stored.

c. Residential septic tanks.

d. Pipeline facilities regulated under the Natural Gas Pipeline Safety Act of 1968, as amended to January 1, 1985 (49 U.S.C. § 1671 et seq.), the Hazardous Liquid Pipeline Safety Act of 1979, as amended to January 1, 1985 (49 U.S.C. § 2001 et seq.), or an intrastate pipeline facility regulated under chapter 479.

e. A surface impoundment, pit, pond, or lagoon.

f. A storm water or wastewater collection system.

g. A flow-through process tank.

h. A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

i. A storage tank situated in an underground area including, but not limited to, a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

Underground storage tank does not include pipes connected to a tank described in paragraphs "a" to "i".

95 Acts, ch 215, §4

Subsection 2 stricken and rewritten

455B.474 Duties of commission — rules.

The commission shall adopt rules pursuant to chapter 17A relating to:

1. Release detection, prevention, and correction as may be necessary to protect human health and the environment, applicable to all owners and operators of underground storage tanks. The rules shall include, but are not limited to, requirements for:

a. Maintaining a leak detection system, an inventory control system with a tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.

b. Maintaining records of any monitoring or leak detection system, inventory control system, or tank testing or comparable system.

c. Reporting of any releases and corrective action taken in response to a release from an underground storage tank.

d. Establishing criteria for classifying sites according to the release of a regulated substance in connection with an underground storage tank.

(1) The classification system shall consider the actual or potential threat to public health and safety and to the environment posed by the contaminated site and shall take into account relevant factors, including the presence of contamination in soils, groundwaters, and surface waters, and the effect of conduits, barriers, and distances on the contamination found in those areas according to the following factors:

(a) Soils shall be evaluated based upon the depth of the existing contamination and its distance from the ground surface to the contamination zone and the contamination zone to the groundwater; the soil type and permeability, including whether the contamination exists in clay, till or sand and gravel; and the

variability of the soils, whether the contamination exists in soils of natural variability or in a disturbed area.

(b) Groundwaters shall be evaluated based upon the depth of the contamination and its distance from the ground surface to the groundwater and from the contamination zone to the groundwater; the flow pattern of the groundwater, the direction of the flow in relation to the contamination zone and the inter-connection of the groundwater with the surface or with surface water and with other groundwater sources; the nature of the groundwater, whether it is located in a high yield aquifer, an isolated, low yield aquifer, or in a transient saturation zone; and use of the groundwater, whether it is used as a drinking water source for public or private drinking water supplies, for livestock watering, or for commercial and industrial processing.

(c) Surface water shall be evaluated based upon its location, its distance in relation to the contamination zone, the groundwater system and flow, and its location in relation to surface drainage.

(d) The effect of conduits, barriers, and distances on the contamination found in soils, groundwaters, and surface waters. Consideration should be given to the following: the effect of contamination on conduits such as wells, utility lines, tile lines and drainage systems; the effect of conduits on the transport of the contamination; whether a well is active or abandoned; what function the utility line serves, whether it is a sewer line, a water distribution line, telephone line, or other line; the existence of barriers such as buildings and other structures, pavement, and natural barriers, including rock formations and ravines; and the distance which separates the contamination found in the soils, groundwaters, or surface waters from the conduits and barriers.

(2) A site shall be classified as either high risk, low risk, or no action required.

(a) A site shall be considered high risk when it is determined that contamination from the site presents an unreasonable risk to public health and safety or the environment under any of the following conditions:

(i) Contamination is affecting or likely to affect groundwater which is used as a source water for public or private water supplies, to a level rendering them unsafe for human consumption.

(ii) Contamination is actually affecting or is likely to affect surface water bodies to a level where surface water quality standards, under section 455B.173, will be exceeded.

(iii) Harmful or explosive concentrations of petroleum substances or vapors affecting structures or utility installations exist or are likely to occur.

(b) A site shall be considered low risk under any of the following conditions:

(i) Contamination is present and is affecting groundwater, but high risk conditions do not exist and are not likely to occur.

(ii) Contamination is above action level standards, but high risk conditions do not exist and are not likely to occur.

(c) A site shall be considered no action required if contamination is below action level standards and high or low risk conditions do not exist and are not likely to occur.

(d) For purposes of classifying a site as either low risk or no action required, the department shall rely upon the example tier one risk-based screening level look-up table of the American society for testing of materials' emergency standard, ES38-94, or other look-up table as determined by the department by rule.

(e) A site cleanup report which classifies a site as either high risk, low risk, or no action required shall be submitted by a groundwater professional to the department with a certification that the report complies with the provisions of this chapter and rules adopted by the department. The report shall be determinative of the appropriate classification of the site. However, if the report is found to be inaccurate or incomplete, and if based upon information in the report the risk classification of the site cannot be reasonably determined by the department based upon industry standards, the department shall work with the groundwater professional to obtain the additional information necessary to appropriately classify the site. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in a mistaken classification of a site shall be guilty of a serious misdemeanor and shall have the groundwater professional's certification revoked under section 455G.18.

e. The closure of tanks to prevent any future release of a regulated substance into the environment. If consistent with federal environmental protection agency technical standard regulations, state tank closure rules shall include, at the tank owner's election, an option to fill the tank with an inert material. Removal of a tank shall not be required if the tank is filled with an inert material pursuant to department of natural resources rules. A tank closed, or to be closed and which is actually closed, within one year of May 13, 1988, shall be required to complete monitoring or testing as required by the department to ensure that the tank did not leak prior to closure, but shall not be required to have a monitoring system installed.

f. Establishing corrective action response requirements for the release of a regulated substance in connection with an underground storage tank. The corrective action response requirements shall include, but not be limited to, all of the following:

(1) A requirement that the site cleanup report do all of the following:

(a) Identify the nature and level of contamination resulting from the release.

(b) Provide supporting data and a recommendation of the degree of risk posed by the site relative to the site classification system adopted pursuant to paragraph "d".

(c) Provide supporting data and a recommendation of the need for corrective action.

(d) Identify the corrective action options which shall address the practical feasibility of implementation, costs, expected length of time to implement, and environmental benefits.

(2) To the fullest extent practicable, allow for the use of generally available hydrological, geological, topographical, and geographical information and minimize site specific testing in preparation of the site cleanup report.

(3) Require that at a minimum the source of a release be stopped either by repairing, upgrading, or closing the tank and that free product be removed or contained on site.

(4) High risk sites shall be addressed pursuant to a corrective action design report, as submitted by a groundwater professional and as accepted by the department. The corrective action design report shall determine the most appropriate response to the high risk conditions presented. The appropriate corrective action response shall be based upon industry standards and shall take into account the following:

(a) The extent of remediation required to reclassify the site as a low risk site.

(b) The most appropriate exposure scenarios based upon residential, commercial, or industrial use or other predefined industry accepted scenarios.

(c) Exposure pathway characterizations including contaminant sources, transport mechanisms, and exposure pathways.

(d) Affected human or environmental receptors and exposure scenarios based on current and projected use scenarios.

(e) Risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the public health and safety or the environment using a tiered procedure consistent with the American society for testing of materials' emergency standard, ES38-94.

(f) Other relevant site specific factors such as the feasibility of available technologies, existing background contaminant levels, current and planned future uses, ecological, aesthetic, and other relevant criteria, and the applicability and availability of engineering and institutional controls.

(g) Remediation shall not be required on a site that does not present an increased cancer risk at the point of exposure of one in one million for residential areas or one in ten thousand for nonresidential areas.

(5) A corrective action design report submitted by a groundwater professional shall be accepted by the department and shall be primarily relied upon by the department to determine the corrective action response requirements of the site. However, if the corrective action design report is found to be inaccurate or incomplete, and if based upon information in the report the appropriate corrective action response cannot be reasonably determined by the department based upon industry standards, the department shall work with the groundwater professional to obtain the additional information necessary to appropriately determine the corrective action response require-

ments. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in an improper or incorrect corrective action response shall be guilty of a serious misdemeanor and shall have the groundwater professional's certification revoked under section 455G.18.

(6) Low risk sites shall be monitored as deemed necessary by the department consistent with industry standards. Monitoring shall not be required on a site which has received a no further action certificate.

(7) An owner or operator may elect to proceed with additional corrective action on the site. However, any action taken in addition to that required pursuant to this paragraph "f" shall be solely at the expense of the owner or operator and shall not be considered corrective action for purposes of section 455G.9.

(8) Notwithstanding other provisions to the contrary and to the extent permitted by federal law, the department shall allow for bioremediation of soils and groundwater. For purposes of this subparagraph, "bioremediation" means the use of biological organisms, including microorganisms or plants, to degrade organic pollutants to common natural products.

(9) Replacement or upgrade of a tank on a site classified as a high or low risk site shall be equipped with a secondary containment system with monitoring of the space between the primary and secondary containment structures or other board approved tank system or methodology.

(10) The commission and the board shall cooperate to ensure that remedial measures required by the corrective action rules adopted pursuant to this paragraph are reasonably cost-effective and shall, to the fullest extent possible, avoid duplicating and conflicting requirements.

(11) The director may order an owner or operator to immediately take all corrective actions deemed reasonable and necessary by the director if the corrective action is consistent with the prioritization rules adopted under this paragraph. Any order taken by the director pursuant to this subparagraph shall be reviewed at the next meeting of the environmental protection commission.

g. Specifying an adequate monitoring system to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources for regulated tanks installed prior to January 14, 1987. The effective date of the rules adopted shall be January 14, 1989. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Unless the federal environmental protection agency adopts final rules to the contrary, rules adopted pursuant to this section shall not apply to hydraulic lift reservoirs, such as for automobile hoists and elevators, containing hydraulic oil.

h. Issuing a no further action certificate or a monitoring certificate to the owner or operator of an underground storage tank site.

(1) A no further action certificate shall be issued by the department for a site which has been classified as a no further action site or which has been reclassified pursuant to completion of a corrective action plan or monitoring plan to be a no further action site.

(2) A monitoring certificate shall be issued by the department for a site which does not require remediation, but does require monitoring of the site.

(3) A certificate may be recorded with the county recorder. The owner or operator of a site who has been issued a certificate under this paragraph "h" or a subsequent purchaser of the site shall not be required to perform further corrective action solely because action standards are changed at a later date. A certificate shall not prevent the department from ordering corrective action of a new release.

In adopting the rules under this subsection, the commission may distinguish between types, classes, and ages of underground storage tanks. In making the distinctions, the commission may take into consideration factors including, but not limited to, location of the tanks, compatibility of a tank material with the soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the degree of risk presented by the regulated substance, the technical and managerial capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the underground storage tank is fabricated.

The department may issue a variance, which includes an enforceable compliance schedule, from the mandatory monitoring requirement for an owner or operator who demonstrates plans for tank removal, replacement, or filling with an inert material pursuant to a department approved variance. A variance may be renewed for just cause.

2. The maintenance of evidence of financial responsibility as the director determines to be feasible and necessary for taking corrective action and for compensating third parties for bodily injury and property damage caused by release of a regulated substance from an underground storage tank.

a. Financial responsibility required by this subsection may be established in accordance with rules adopted by the commission by any one, or any combination, of the following methods: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In adopting requirements under this subsection, the commission may specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing the evidence of financial responsibility.

A person who establishes financial responsibility by self-insurance shall not require or shall not enforce an indemnification agreement with an operator or owner of the tank covered by the self-insurance obligation, unless the owner or operator has committed a substantial breach of a contract between the

self-insurer and the owner or operator, and that substantial breach relates directly to the operation of the tank in an environmentally sound manner. This paragraph applies to all contracts between a self-insurer and an owner or operator entered into on or after May 5, 1989.

b. If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal bankruptcy law or if jurisdiction in any state court or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this paragraph, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

c. The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this subsection. This subsection does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.

d. For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

e. If an owner or operator is required to uncover or remove an underground storage tank based upon a determination of the department that the underground storage tank presents a hazard to the public health, safety, or the environment, and if upon inspection of the tank the determination is unfounded, the state may reimburse reasonable costs incurred in the inspection of the tank. Claims for reimbursement shall be filed on forms provided by the commission. The commission shall adopt rules pursuant to chapter 17A relating to determinations of reasonableness in approval or rejection of claims in cases of dispute. Claims shall be paid from the general fund of the state. When any one of the tanks or the related pumps and piping at a multiple tank facility are found to be leaking, the state shall not reimburse costs for uncovering or removing any of the other tanks, piping, or pumps that are not found to be leaking.

3. Standards of performance for new underground storage tanks which shall include, but are not

limited to, design, construction, installation, release detection, and compatibility standards. Until the effective date of the standards adopted by the commission and after January 1, 1986, a person shall not install an underground storage tank for the purpose of storing regulated substances unless the tank (whether of single or double wall construction) meets all the following conditions:

a. The tank will prevent release due to corrosion or structural failure for the operational life of the tank.

b. The tank is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance.

c. The material used in the construction or lining of the tank is compatible with the substance to be stored. If soil tests conducted in accordance with A.S.T.M., standard G 57-78 or another standard approved by the commission show that soil resistivity in an installation location is twelve thousand ohm/cm or more (unless a more stringent soil resistivity standard is adopted by rule of the commission), a storage tank without corrosion protection may be installed in that location until the effective date of the standards adopted by the commission and after January 1, 1986.

d. Rules adopted by the commission shall specify adequate monitoring systems to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources from regulated tanks installed after January 14, 1987. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Tanks installed on or after January 14, 1987, shall continue to be considered new tanks for purposes of this chapter and are subject to state monitoring requirements unless federal requirements are more restrictive.

4. The form and content of the written notices required by section 455B.473.

5. The duties of owners or operators of underground storage tanks to locate and abate the source of release of regulated substances, when in the judgment of the director, the local hydrology, geology and other relevant factors reasonably include a tank as a potential source.

6. Reporting requirements necessary to enable the department to maintain an accurate inventory of underground storage tanks.

7. Designation of regulated substances subject to this part, consistent with section 455B.471, subsection 8. The rules shall be at least as stringent as the regulations of the federal government pursuant to section 311, subsection b, paragraph 2, subparagraph A of the federal Water Pollution Control Act, 33 U.S.C. § 1321(b)(2)(A), pursuant to section 102 of the Comprehensive Environmental Response, Compens-

sation, and Liability Act, 42 U.S.C. § 9602, pursuant to section 307, subsection a of the federal Water Pollution Control Act, 33 U.S.C. § 1317(a), pursuant to section 112 of the Clean Air Act, 42 U.S.C. § 7412, or pursuant to section 7 of the Toxic Substances Control Act, 15 U.S.C. § 2606.

The rules adopted by the commission under this section shall be consistent with and shall not exceed the requirements of federal regulations relating to the regulation of underground storage tanks except as provided in subsection 1, paragraph "f" and subsection 3, paragraph "d". It is the intent of the general assembly that state rules adopted pursuant to subsection 1, paragraph "f" and subsection 3, paragraph "d" be consistent with and not more restrictive than federal regulations adopted by the United States environmental protection agency when those rules are adopted.

95 Acts, ch 215, §5-10

Subsection 1, paragraph d, subparagraph (2), subparagraph subdivision (a), unnumbered paragraph 1, and subparagraph subdivision (d) stricken and rewritten

Subsection 1, paragraph d, subparagraph (2), NEW subparagraph subdivision (e)

Subsection 1, paragraph f, subparagraphs (4), (5) and (6) stricken and rewritten

Subsection 1, paragraph f, NEW subparagraph (7) and former subparagraphs (7)-(10) renumbered as (8)-(11)

Subsection 1, paragraph h stricken and rewritten

455B.517 Duties of waste management assistance division.

The waste management assistance division shall do all of the following:

1. Establish the criteria for the development of the toxics pollution prevention program.
2. Develop and implement a toxics pollution prevention program.
3. Assist toxics users in the completion of toxics pollution prevention plans and inventories, and provide technical assistance as requested by the toxics user.
4. Seek, receive, and accept funds in the form of appropriations, grants, awards, wills, bequests, endowments, and gifts for the uses designated pursuant to section 455B.133B. The division shall also coordinate existing resources and oversee the disbursement of federal grant moneys to provide consistency in achieving the toxics pollution prevention goal of the state.
5. Develop and implement guidelines regarding assistance to toxics users to ensure that the plans are multimedia in approach and are not duplicated by the department or other agencies of the state.
6. Identify obstacles to the promotion, within the toxics user community, of toxics pollution prevention techniques and practices.
7. Compile an assessment inventory, through solicitation of recommendations of toxics users and owners and operators of air contaminant sources, of the informational and technical assistance needs of toxics users and air contaminant sources.
8. Function as a repository of research, data, and information regarding toxics pollution prevention activities throughout the state.

9. Provide a forum for public discussion and deliberation regarding toxic substances and toxics pollution prevention.

10. Promote increased coordination between the department, the Iowa waste reduction center at the university of northern Iowa, and other departments, agencies, and institutions with responsibilities relating to toxic substances.

11. Coordinate state and federal efforts of clear-houses established to provide access to toxics reduction and management data for the use of toxics users.

12. Make recommendations to the general assembly by January 1, 1992, regarding a funding structure for the long-term implementation and continuation of a toxics pollution prevention program.

13. Work with the Iowa waste reduction center at the university of northern Iowa to assist small business toxics users with plan preparation and technical assistance.

95 Acts, ch 26, §3

Subsection 4, paragraph a changed to an unnumbered paragraph and paragraph b stricken

455B.602 through 455B.700 Reserved.

DIVISION IX

OIL SPILLS

455B.701 Oil spill immunity.

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

a. *"Damages"* means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or relating to the discharge or threatened discharge of oil.

b. *"Discharge"* means any emission, other than natural seepage, intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

c. *"Federal on-scene coordinator"* means the federal official designated by the federal agency in charge of the removal efforts or by the United States environmental protection agency or the United States coast guard to coordinate and direct responses under the national contingency plan.

d. *"National contingency plan"* means the national contingency plan prepared and published under 33 U.S.C. § 1321(d).

e. *"Oil"* means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

f. *"Remove"* or *"removal"* means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

g. *"Removal costs"* means the costs of removal that are incurred after a discharge of oil has occurred

or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

h. "Responsible party" means a responsible party as defined under 33 U.S.C. § 2701.

2. *Exemption from liability.*

a. Notwithstanding any other provisions of law, a person is not liable for removal costs or damages which result from acts or omissions taken or made in the course of rendering care, assistance, or advice consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or by the state official with responsibility for oil spill response.

b. Paragraph "a" does not apply to the following:

(1) A responsible party.

(2) When the damage involves personal injury or wrongful death.

(3) If the person is grossly negligent or engages in willful misconduct.

c. A responsible party is liable for any removal costs and damages that another person is relieved of under paragraph "a".

d. This section does not affect the liability of a responsible party for oil spill response under state law.

95 Acts, ch 15, §1
NEW section

CHAPTER 455D

WASTE VOLUME REDUCTION AND RECYCLING

455D.3 Goals for waste stream reduction — procedures — reductions and increases in fees.

1. *Year 1994 and 2000 goals.* The goal of the state is to reduce the amount of materials in the waste stream, existing as of July 1, 1988, twenty-five percent by July 1, 1994, and fifty percent by July 1, 2000, through the practice of waste volume reduction at the source and through recycling. For the purposes of this section, "waste stream" means the disposal of solid waste as "solid waste" is defined in section 455B.301.

Notwithstanding section 455D.1, subsection 6, facilities which employ combustion of solid waste with energy recovery and refuse-derived fuel, which are included in an approved comprehensive plan, and which were in operation prior to July 1, 1989, may include these processes in the definition of recycling for the purpose of meeting the state goal if at least thirty-five percent of the waste reduction goal, required to be met by July 1, 2000, pursuant to this section, is met through volume reduction at the source and recycling and reuse, as established pursuant to section 455B.301A, subsection 1, paragraphs "a" and "b".

2. *Projected waste stream — year 2000.* A planning area may request the department to allow the planning area to project the planning area's waste stream for the year 2000 for purposes of meeting the year 2000 fifty percent waste volume reduction and recycling goals required by this section. The department shall make a determination of the eligibility to use this option based upon the annual tonnage of the solid waste processed by the planning area and the population density of the area the planning area serves. If the department agrees to allow the planning area to make year 2000 waste stream projections, the planning area shall calculate the year 2000 projections and submit the projections to the department for approval. The planning area shall use data which is current as of July 1, 1994, and shall take into

account population, employment, and industrial changes and documented diversions due to existing programs. The planning area shall use the departmental methodology to calculate the tonnage necessary to be diverted from landfills in order to meet the year 2000 fifty percent waste volume reduction and recycling goals required by this section. Once the department approves the year 2000 projections, the projections shall not be changed prior to the year 2001.

3. *Departmental monitoring.*

a. By October 31, 1994, a planning area shall submit to the department a solid waste abatement table which is updated through June 30, 1994. By April 1, 1995, the department shall report to the general assembly on the progress that has been made by each planning area on attainment of the July 1, 1994, twenty-five percent goal.

If at any time the department determines that a planning area has met or exceeded the twenty-five percent goal, a planning area shall subtract fifty cents from the total amount of the tonnage fee imposed pursuant to section 455B.310, subsection 2. The reduction in tonnage fees pursuant to this paragraph shall be taken from that portion of the tonnage fees which would have been allocated for funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph "a", subparagraph (1).

If the department determines that a planning area has failed to meet the July 1, 1994, twenty-five percent goal, the planning area shall, at a minimum, implement the solid waste management techniques as listed in subsection 4. Evidence of implementation of the solid waste management techniques shall be documented in subsequent comprehensive plans submitted to the department.

b. By October 31, 2000, a planning area shall submit to the department, a solid waste abatement table which is updated through June 30, 2000. By April 1, 2001, the department shall report to the general assembly on the progress that has been made

by each planning area on attainment of the July 1, 2000, fifty percent goal.

If at any time the department determines that a planning area has met or exceeded the fifty percent goal, the planning area shall subtract fifty cents from the total amount of the tonnage fee imposed pursuant to section 455B.310, subsection 2. This amount shall be in addition to any amount subtracted pursuant to paragraph "a" of this subsection. The reduction in tonnage fees pursuant to this paragraph shall be taken from that portion of the tonnage fees which would have been allocated to funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph "a", subparagraph (1).

4. *Solid waste management techniques.* A planning area that fails to meet the twenty-five percent goal shall implement the following solid waste management techniques:

a. Remit fifty cents per ton to the department, as of July 1, 1995. The funds shall be deposited in the solid waste account under section 455E.11, subsection 2, paragraph "a", to be used for funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph "a", subparagraph (1). Monies under this paragraph shall be remitted until such time as evidence of attainment of the twenty-five percent goal is documented in subsequent comprehensive plans submitted to the department.

b. Notify the public of the planning area's failure to meet the waste volume reduction goals of this section, utilizing standard language developed by the department for that purpose.

c. Develop draft ordinances which shall be used by local governments for establishing collection fees that are based on volume or on the number of containers used for disposal by residents.

d. Conduct an educational and promotional program to inform citizens of the manner and benefits of reducing, reusing, and recycling materials and the procurement of products made with recycled content. The program shall include the following:

(1) Targeted waste reduction and recycling education for residents, including multifamily dwelling complexes having five or more units.

(2) An intensive one-day seminar for the commercial sector regarding the benefits of and opportunities for waste reduction and recycling.

(3) Promotion of recycling through targeted community and media events.

(4) Recycling notification and education packets to all new residential, commercial, and institutional collection service customers that include, at a minimum, the manner of preparation of materials for collection, and the reasons for separation of materials for recycling.

95 Acts, ch 80, §2; 95 Acts, ch 209, §25
See Code editor's note
Subsections 3 and 4 amended
Subsection 3, paragraph b amended

455D.5 Statewide waste reduction and recycling network — established.

1. The department shall establish a statewide

waste reduction and recycling network to promote the waste management policy contained in section 455B.481 and the waste management hierarchy contained in section 455B.301A. Programs established shall encourage waste generators to reduce the volume of waste generated and to recycle or properly dispose of the waste that is generated. The network shall utilize existing recycling companies when possible. The programs may utilize financial and legal incentives, education, technical assistance, regulation, and other methods as appropriate to implement the programs. The programs may involve the development of public and private sector initiatives, the development of markets and other opportunities for waste reduction and recycling, and other related efforts.

2. The elements of the network shall include but are not limited to all of the following:

a. Promotion of efforts to increase the amount of recyclable materials used by the public.

b. Promotion of efforts to recover recyclable materials from the waste stream.

c. Promotion of local efforts to implement recycling collection centers located at disposal sites or other convenient local sites.

d. Promotion of local efforts of curbside collection of separated recyclable waste materials.

e. Provision of public education programs which promote public awareness of waste volume reduction and the use of recyclable materials.

f. Promotion of the creation of markets for recyclable materials.

g. Promotion of research, manufacturing processes, and product development, which provide for waste reduction through decreased material input, and resource consumption.

h. Promotion of the concentration of the efforts of the business and industry resource search service by the small business assistance center for the safe and economic management of solid waste and hazardous substances at the university of northern Iowa, to locate existing waste streams and materials from businesses and industries which generate small amounts of waste and to catalyze the reuse of these materials in the production of goods and services.

95 Acts, ch 44, §4
Subsection 3 stricken

455D.10A Household batteries — heavy metal content and recycling requirements.

1. *Definitions.* As used in this section and in section 455D.10B unless the context otherwise requires:

a. "Button cell battery" means a household battery which resembles a button or coin in size and shape.

b. "Consumer" means a person who purchases household batteries for personal or business use.

c. "Easily removed" means a battery or battery pack which can be removed from a battery-powered product by the consumer, using common household tools.

d. "Household battery" means any type of dry cell battery used by consumers, including but not limited to mercuric oxide, carbon-zinc, zinc air, silver oxide, nickel-cadmium, nickel-hydride, alkaline, lithium, or sealed lead acid batteries.

e. "Institutional generator" means a governmental, commercial, industrial, communications, or medical facility which generates waste mercuric oxide, nickel-cadmium, or sealed lead acid rechargeable batteries.

f. "Rechargeable consumer product" means a product that is primarily powered by a rechargeable battery and is primarily used or purchased to be used for household purposes.

g. "Rechargeable household battery" means a small sealed nickel-cadmium or sealed lead acid battery used for nonvehicular purposes and weighing less than twenty-five pounds, which can be recharged by the consumer and reused.

2. Mercury content limited.

a. A person shall not sell, distribute, or offer for retail sale in this state an alkaline manganese battery that contains more than twenty-five one-thousandths of a percent mercury by weight. A person shall not sell, distribute, or offer for sale at retail in this state an alkaline manganese household battery manufactured on or after January 1, 1996, to which mercury has been added. This paragraph does not apply to alkaline manganese button cell batteries.

b. A person shall not sell, distribute, or offer for retail sale in this state an alkaline manganese button cell battery which contains more than twenty-five milligrams of mercury.

3. Recycling/disposal requirements for household batteries.

a. Beginning July 1, 1996, a system or systems shall be in place to protect the health and safety of Iowans, and the state's environment, from the toxic components of used household batteries. The system or systems shall include at least one of the following elements:

(1) Elimination or reduction to the extent established by rule of the department, of heavy metals and other toxic components in nickel-cadmium, mercuric oxide, or sealed lead acid household batteries, to ensure protection of public health, safety, and the environment when placed in or disposed of as part of mixed municipal solid waste.

(2) Establishment of a comprehensive recycling program for each type of battery listed in subparagraph (1) that is sold, distributed, or offered for sale in this state. An institutional generator shall provide for the on-site source separation and collection of used mercuric oxide batteries, nickel-cadmium rechargeable batteries, and sealed lead acid rechargeable batteries. All participants in the stream of commerce relating to the batteries, which are listed in subparagraph (1) and which are not designated as exempt pursuant to section 455D.10B, subsection 2, paragraph "c" or "d", shall, individually or collectively, be responsible for developing and operating a system for collecting and transporting used batteries

to the appropriate dry cell battery manufacturer or to a site or facility designated by a manufacturer. Additionally, dry cell battery manufacturers shall be responsible for the recycling of used batteries in an environmentally sound manner.

(3) Provision for collection, transporting, and proper disposal of used household batteries of the types listed in subparagraph (1) which are distributed, sold, or offered for retail sale in the state. For the purposes of this paragraph, "proper disposal" means disposal which complies with all applicable state and federal laws. All participants in the stream of commerce relating to the batteries, which are listed in subparagraph (1) and which are not designated as exempt pursuant to section 455D.10B, subsection 2, paragraph "c" or "d", shall, individually or collectively, be responsible for developing and operating a system for collecting and transporting used batteries to the appropriate dry cell battery manufacturer or to a site or facility designated by a manufacturer. Additionally, dry cell battery manufacturers shall be responsible for proper disposal of the used batteries.

b. To meet the recycling and disposal requirements of this subsection, participants in the systems established under this subsection, either individually or collectively, shall do all of the following:

(1) Identify a collection entity, other than a local government collection system, unless the local government agrees otherwise, through which the discarded batteries listed in paragraph "a", subparagraph (1) shall be returned for collection and recycling or disposal.

(2) Inform each customer of the prohibition of disposal of batteries listed in paragraph "a", subparagraph (1), and a safe and convenient return process available to the customer for recycling or proper disposal.

c. After July 1, 1996, nickel-cadmium, sealed lead acid, or mercuric oxide household batteries shall not be sold, distributed, or offered for sale in the state, unless a system required by this section is in operation.

d. The department may make recommendations to the commission to include other types of household or rechargeable batteries, not enumerated in paragraph "a", subparagraph (1), in the requirements of this subsection.

e. This subsection does not apply to batteries subject to regulation under the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.

4. *Rules adopted.* The commission shall adopt, upon recommendation of the director, the rules necessary to carry out the provisions of this section pursuant to chapter 17A.

5. *Penalties.* A person violating a provision of this section is subject to a civil penalty of not more than ten thousand dollars per day of violation.

95 Acts, ch 99, §1
Subsection 2 amended

455D.16 Packaging products — recycling — prohibition of polystyrene products. Repealed by 95 Acts, ch 44, § 5.

CHAPTER 455E

GROUNDWATER PROTECTION

455E.11 Groundwater protection fund established — appropriations.

1. A groundwater protection fund is created in the state treasury. Moneys received from sources designated for purposes related to groundwater monitoring and groundwater quality standards shall be deposited in the fund. Notwithstanding section 8.33, any unexpended balances in the groundwater protection fund and in any of the accounts within the groundwater protection fund at the end of each fiscal year shall be retained in the fund and the respective accounts within the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the groundwater protection fund or in any of the accounts within the groundwater protection fund shall be credited to the groundwater protection fund or the respective accounts within the groundwater protection fund. The fund may be used for the purposes established for each account within the fund.

The director shall include in the departmental budget prepared pursuant to section 455A.4, subsection 1, paragraph "c", a proposal for the use of groundwater protection fund moneys, and a report of the uses of the groundwater protection fund moneys appropriated in the previous fiscal year.

The secretary of agriculture shall submit with the report prepared pursuant to section 7A.3 a proposal for the use of groundwater protection fund moneys, and a report of the uses of the groundwater protection fund moneys appropriated in the previous fiscal year.

2. The following accounts are created within the groundwater protection fund:

a. A solid waste account. Moneys received from the tonnage fee imposed under section 455B.310 and from other sources designated for environmental protection purposes in relation to sanitary disposal projects shall be deposited in the solid waste account. Moneys shall be allocated as follows:

(1) One dollar and seventy-five cents of the tonnage fee shall be used for funding alternatives to landfills and shall be allocated as follows:

(a) Fifty thousand dollars to the department to implement the special waste authorization program.

(b) Sixty-five thousand dollars to the waste management assistance division of the department to be used for the by-products and waste search service at the university of northern Iowa.

(c) The remaining funds shall be used by the department to develop and implement demonstration projects for landfill alternatives to solid waste disposal including recycling programs.

(2) The remaining one dollar and fifty-five cents shall be used as follows:

(a) Forty-eight percent to the department to be used for the following purposes:

(i) Eight thousand dollars shall be transferred to the Iowa department of public health for departmen-

tal duties required under section 135.11, subsections 20 and 21, and section 139.35.

(ii) The administration and enforcement of a groundwater monitoring program and other required programs relating to solid waste management.

(iii) The development of guidelines for groundwater monitoring at sanitary disposal projects as defined in section 455B.301.

(iv) The waste management assistance division of the department.

(b) Sixteen percent to the university of northern Iowa to develop and maintain the Iowa waste reduction center for the safe and economic management of solid waste and hazardous substances.

(c) Six and one-half percent for the department to establish a program to provide competitive grants to regional coordinating councils for projects in regional economic development centers related to a by-products and waste exchange system. Grantees under this program shall coordinate activities with other available state or multistate waste exchanges, including but not limited to the by-products and waste search service at the university of northern Iowa. The department shall consult with the Iowa department of economic development and the waste reduction center at the university of northern Iowa in establishing criteria for and the awarding of grants under this program. The department shall expend not more than thirty thousand dollars of the moneys appropriated under this subparagraph subdivision to contract with the by-products and waste search service at the university of northern Iowa to provide training and other technical services to grantees under the program. If regional economic development centers cease to exist, the department shall transfer existing contracts to one or more community colleges or councils of governments and shall revise the criteria and rules for this program to allow community colleges or councils of governments to be applicants for competitive grants.

(d) Nine and one-half percent to the department to establish permanent household hazardous waste collection sites so that both urban and rural populations are served and so that collection services are available to the public on a regular basis.

(e) Three percent to the department for payment of transportation costs related to household hazardous waste collection programs.

(f) Eight and one-half percent to the department to provide additional toxic cleanup days and for the natural resource geographic information system required under section 455E.8, subsection 6. Departmental rules adopted for implementation of toxic cleanup days shall provide sufficient flexibility to respond to the household hazardous material collection needs of both small and large communities.

(g) Three percent for the Iowa department of economic development to establish, in cooperation

with the department of natural resources, a marketing initiative to assist Iowa businesses producing recycling or reclamation equipment or services, recyclable products, or products from recycled materials to expand into national markets. Efforts shall include the reuse and recycling of sawdust.

(h) Five and one-half percent to the department for the provision of assistance to public and private entities in developing and implementing waste reduction and minimization programs for Iowa industries.

b. An agriculture management account. Moneys collected from the groundwater protection fee levied pursuant to section 200.8, subsection 4, the portion of the fees collected pursuant to sections 206.8, subsection 2, and 206.12, subsection 3, and other moneys designated for the purpose of agriculture management shall be deposited in the agriculture management account. The agriculture management account shall be used for the following purposes:

(1) Nine thousand dollars of the account is appropriated to the Iowa department of public health for carrying out the departmental duties under section 135.11, subsections 20 and 21, and section 139.35.

(2) Two hundred thousand dollars of the moneys deposited in the agriculture management account is appropriated to the department of agriculture and land stewardship for the fiscal year beginning July 1, 1987, and ending June 30, 1988, for the demonstration projects regarding agriculture drainage wells and sinkholes. Any remaining balance of the appropriation made for the purpose of funding such demonstration projects for the fiscal year beginning July 1, 1987, and ending June 30, 1988, shall not revert to the account, notwithstanding section 8.33, but shall remain available for the purpose of funding such demonstration projects during the fiscal period beginning July 1, 1988, and ending June 30, 1990.

(3) Of the remaining moneys in the account:

(a) Thirty-five percent is appropriated annually for the Leopold center for sustainable agriculture at Iowa state university of science and technology.

(b) Two percent is appropriated annually to the department for the purpose of administering grants to counties and conducting oversight of county-based programs for the testing of private rural water supply wells, private rural water supply well sealing, and the proper closure of private rural abandoned wells and cisterns. Not more than thirty-five percent of the moneys is appropriated annually for grants to counties for the purpose of conducting programs of private rural water supply testing, private rural water supply well sealing, the proper closure of private rural abandoned wells and cisterns, or any combination thereof.

A county applying for grants under this subparagraph subdivision shall submit only one application. To be eligible for a grant, a county must have adopted standards for private water supply and private disposal facilities at least as stringent as the standards adopted by the commission. During each fiscal year,

the amount granted each eligible applicant shall be the total funds available divided by the number of eligible counties applying. Upon receipt of the grant, the county may apply the funds to any one or more of the above three programs.

Not more than six percent of the moneys is appropriated annually to the state hygienic laboratory to assist in well testing. For purposes of this subparagraph subdivision, "cistern" means an artificial reservoir constructed underground for the purpose of storing rainwater.

(c) The department shall allocate a sum not to exceed seventy-nine thousand dollars of the moneys appropriated for the fiscal year beginning July 1, 1987, and ending June 30, 1988, for the preparation of a detailed report and plan for the establishment on July 1, 1988, of the center for health effects of environmental contamination. The plan for establishing the center shall be presented to the general assembly on or before January 15, 1988. The report shall include the assemblage of all existing data relating to Iowa drinking water supplies, including characteristics of source, treatment, presence of contaminants, precise location, and usage patterns to facilitate data retrieval and use in research; and detailed organizational plans, research objectives, and budget projections for the anticipated functions of the center in subsequent years. The department may allocate annually a sum not to exceed nine percent of the moneys of the account to the center, beginning July 1, 1988.

(d) Thirteen percent of the moneys is appropriated annually to the department of agriculture and land stewardship for financial incentive programs related to agricultural drainage wells and sinkholes, for studies and administrative costs relating to sinkholes and agricultural drainage wells programs. Of the thirteen percent allocated for financial incentive programs, not more than fifty thousand dollars is appropriated for the fiscal year beginning July 1, 1987, and ending June 30, 1988, to the department of natural resources for grants to county conservation boards for the development and implementation of projects regarding alternative practices in the remediation of noxious weeds or other vegetation within highway rights-of-way. Any remaining balance of the appropriation made for the purpose of funding of projects regarding alternative practices in the remediation of noxious weeds or other vegetation within highway rights-of-way for the fiscal year beginning July 1, 1987, and ending June 30, 1988, shall not revert to the account, notwithstanding section 8.33, but shall remain available for the purpose of funding the projects during the fiscal period beginning July 1, 1988, and ending June 30, 1990.

c. A household hazardous waste account. The moneys collected pursuant to section 455F.7 and moneys collected pursuant to section 29C.8A which are designated for deposit, shall be deposited in the household hazardous waste account. Two thousand dollars is appropriated annually to the Iowa department of public health to carry out departmental duties under section 135.11, subsections 20 and 21,

and section 139.35. The remainder of the account shall be used to fund Toxic Cleanup Days and the efforts of the department to support a collection system for household hazardous materials, including public education programs, training, and consultation of local governments in the establishment and operation of permanent collection systems, and the management of collection sites, education programs, and other activities pursuant to chapter 455F, including the administration of the household hazardous materials permit program by the department of revenue and finance.

The department shall submit to the general assembly, annually on or before January 1, an itemized report which includes but is not limited to the total amount of moneys collected and the sources of the moneys collected, the amount of moneys expended for administration of the programs funded within the account, and an itemization of any other expenditures made within the previous fiscal year.

d. A storage tank management account. All fees collected pursuant to section 455B.473, subsection 5, and section 455B.479, shall be deposited in the storage tank management account, except those moneys deposited into the Iowa comprehensive petroleum underground storage tank fund pursuant to section 455B.479. Funds shall be expended for the following purposes:

(1) One thousand dollars is appropriated annually to the Iowa department of public health to carry out departmental duties under section 135.11, subsections 20 and 21, and section 139.35.

(2) Twenty-three percent of the proceeds of the fees imposed pursuant to section 455B.473, subsection 5, and section 455B.479 shall be deposited in the account annually, up to a maximum of three hundred fifty thousand dollars. If twenty-three percent of the proceeds exceeds three hundred fifty thousand dollars, the excess shall be deposited into the fund created in section 455G.3. Three hundred fifty thousand dollars is appropriated from the storage tank management account to the department of natural resources for the administration of a state storage tank program pursuant to chapter 455B, division IV, part 8, and for programs which reduce the potential for harm to the environment and the public health from storage tanks.

(3) The remaining funds in the account are appropriated annually to the Iowa comprehensive petroleum underground storage tank fund.

e. An oil overcharge account. The oil overcharge moneys distributed by the United States department of energy, and approved for the energy related components of the groundwater protection strategy available through the energy conservation trust created in section 473.11, shall be deposited in the oil overcharge account as appropriated by the general assembly. The oil overcharge account shall be used for the following purposes:

(1) The following amounts are appropriated to the department of natural resources to implement its responsibilities pursuant to section 455E.8:

(a) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, eight hundred sixty thousand dollars is appropriated.

(b) For the fiscal year beginning July 1, 1988 and ending June 30, 1989, six hundred fifty thousand dollars is appropriated.

(c) For the fiscal year beginning July 1, 1989 and ending June 30, 1990, six hundred thousand dollars is appropriated.

(d) For the fiscal year beginning July 1, 1990 and ending June 30, 1991, five hundred thousand dollars is appropriated.

(e) For the fiscal year beginning July 1, 1991 and ending June 30, 1992, five hundred thousand dollars is appropriated.

(2) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, five hundred sixty thousand dollars is appropriated to the department of natural resources for assessing rural, private water supply quality.

(3) For the fiscal period beginning July 1, 1987 and ending June 30, 1989, one hundred thousand dollars is appropriated annually to the department of natural resources for the administration of a groundwater monitoring program at sanitary landfills.

(4) The following amounts are appropriated to the Iowa state water resources research institute to provide competitive grants to colleges, universities, and private institutions within the state for the development of research and education programs regarding alternative disposal methods and groundwater protection:

(a) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, one hundred twenty thousand dollars is appropriated.

(b) For the fiscal year beginning July 1, 1988 and ending June 30, 1989, one hundred thousand dollars is appropriated.

(c) For the fiscal year beginning July 1, 1989 and ending June 30, 1990, one hundred thousand dollars is appropriated.

(5) The following amounts are appropriated to the department of natural resources to develop and implement demonstration projects for landfill alternatives to solid waste disposal, including recycling programs:

(a) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, seven hundred sixty thousand dollars is appropriated.

(b) For the fiscal year beginning July 1, 1988 and ending June 30, 1989, eight hundred fifty thousand dollars is appropriated.

(6) For the fiscal period beginning July 1, 1987 and ending June 30, 1988, eight hundred thousand dollars is appropriated to the Leopold center for sustainable agriculture.

(7) Seven million five hundred thousand dollars is appropriated to the agriculture energy management fund created under chapter 161B for the fiscal period beginning July 1, 1987 and ending June 30, 1992, to develop nonregulatory programs to implement integrated farm management of farm chemi-

als for environmental protection, energy conservation, and farm profitability; interactive public and farmer education; and applied studies on best management practices and best appropriate technology for chemical use efficiency and reduction.

(8) The following amounts are appropriated to the department of natural resources to continue the Big Spring demonstration project in Clayton county.

(a) For the fiscal period beginning July 1, 1987 and ending June 30, 1990, seven hundred thousand dollars is appropriated annually.

(b) For the fiscal period beginning July 1, 1990 and ending June 30, 1992, five hundred thousand dollars is appropriated annually.

(9) For the fiscal period beginning July 1, 1987 and ending June 30, 1990, one hundred thousand dollars is appropriated annually to the department of agriculture and land stewardship to implement a targeted education program on best management practices and technologies for the mitigation of groundwater contamination from or closure of agricultural drainage wells, abandoned wells, and sink-holes.

95 Acts, ch 80, §3; 95 Acts, ch 97, §1; 95 Acts, ch 216, §35
 Subsection 2, paragraph a stricken and rewritten
 Subsection 2, paragraph a, subparagraph (2), subparagraph subdivision
 (f) amended
 Subsection 2, paragraph b, subparagraph (3), subparagraph subdivision
 (b) stricken and rewritten

CHAPTER 455G

COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND

455G.3 Establishment of Iowa comprehensive petroleum underground storage tank fund.

1. The Iowa comprehensive petroleum underground storage tank fund is created as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Iowa comprehensive petroleum underground storage tank fund. Interest or other income earned by the fund shall be deposited in the fund. The fund shall include moneys credited to the fund under this section, section 423.24, subsection 1, paragraph "a", subparagraph (1), and sections 455G.8, 455G.9, 455G.10, and 455G.11, and other funds which by law may be credited to the fund. The moneys in the fund are appropriated to and for the purposes of the board as provided in this chapter. Amounts in the fund shall not be subject to appropriation for any other purpose by the general assembly, but shall be used only for the purposes set forth in this chapter. The treasurer of state shall act as custodian of the fund and disburse amounts contained in it as directed by the board including automatic disbursements of funds as received pursuant to the terms of bond indentures and documents and security provisions to trustees and custodians. The treasurer of state is authorized to invest the funds deposited in the fund at the direction of the board and subject to any limitations contained in any applicable bond proceedings. The income from such investment shall be credited to and deposited in the fund. The fund shall be administered by the board which shall make expenditures from the fund consistent with the purposes of the programs set out in this chapter without further appropriation. The fund may be divided into different accounts with different depositories as determined by the board and to fulfill the purposes of this chapter.

2. The board shall assist Iowa's owners and operators of petroleum underground storage tanks in complying with federal environmental protection agency technical and financial responsibility regulations by establishment of the Iowa comprehensive petroleum underground storage tank fund. The authority may issue its bonds, or series of bonds, to assist the board, as provided in this chapter.

3. The purposes of this chapter shall include but are not limited to any of the following:

a. To establish a remedial account to fund corrective action for petroleum releases as provided by section 455G.9.

b. To establish a loan guarantee account, as provided by and to the extent permitted by section 455G.10.

c. To establish an insurance account for insurable underground storage tank risks within the state as provided by section 455G.11.

d. To establish a marketability fund for the purposes as stated in section 455G.21.

4. The state, the general fund of the state, or any other fund of the state, other than the Iowa comprehensive petroleum underground storage tank fund, is not liable for a claim or cause of action in connection with a tank not owned or operated by the state, or agency of the state. All expenses incurred by the fund shall be payable solely from the fund and no liability or obligation shall be imposed upon the state. The liability of the fund is limited to the extent of coverage provided by the account under which a claim is submitted, subject to the terms and conditions of that coverage. The liability of the fund is further limited by the moneys made available to the fund, and no remedy shall be ordered which would require the fund to exceed its then current funding limitations to satisfy an award or which would restrict the availability of moneys for higher priority sites. The

state is not liable for a claim presented against the fund.

5. For purposes of payment of refunds of the environmental protection charge under section 424.15 by the department of revenue and finance, the treasurer of state shall allocate to the department of revenue and finance the total amount budgeted by the fund's board for environmental protection charge refunds. Any unused funds shall be remitted to the treasurer of state.

95 Acts, ch 215, §11, 12
Subsection 1 amended
Subsection 3, NEW paragraph d

455G.6 Iowa comprehensive petroleum underground storage tank fund — general and specific powers.

In administering the fund, the board has all of the general powers reasonably necessary and convenient to carry out its purposes and duties and may do any of the following, subject to express limitations contained in this chapter:

1. Guarantee secured and unsecured loans, and enter into agreements for corrective action, acquisition and construction of tank improvements, and provide for the insurance program. The loan guarantees may be made to a person or entity owning or operating a tank. The board may take any action which is reasonable and lawful to protect its security and to avoid losses from its loan guarantees.

2. Acquire, hold, and mortgage personal property and real estate and interests in real estate to be used.

3. Purchase, construct, improve, furnish, equip, lease, option, sell, exchange, or otherwise dispose of one or more improvements under the terms it determines.

4. Grant a mortgage, lien, pledge, assignment, or other encumbrance on one or more improvements, revenues, asset of right, accounts, or funds established or received in connection with the fund, including revenues derived from the use tax under section 423.24, subsection 1, paragraph "a", subparagraph (1), and deposited in the fund or an account of the fund.

5. Provide that the interest on bonds may vary in accordance with a base or formula.

6. Contract for the acquisition, construction, or both of one or more improvements or parts of one or more improvements and for the leasing, subleasing, sale, or other disposition of one or more improvements in a manner it determines.

7. The board may contract with the authority for the authority to issue bonds and do all things necessary with respect to the purposes of the fund, as set out in the contract between the board and the authority. The board may delegate to the authority and the authority shall then have all of the powers of the board which are necessary to issue and secure bonds and carry out the purposes of the fund, to the extent provided in the contract between the board and the authority. The authority may issue the authority's bonds in principal amounts which, in the opinion of

the board, are necessary to provide sufficient funds for the fund, the payment of interest on the bonds, the establishment of reserves to secure the bonds, the costs of issuance of the bonds, other expenditures of the authority incident to and necessary or convenient to carry out the bond issue for the fund, and all other expenditures of the board necessary or convenient to administer the fund. The bonds are investment securities and negotiable instruments within the meaning of and for purposes of the uniform commercial code.

8. Bonds issued under this section are payable solely and only out of the moneys, assets, or revenues of the fund, all of which may be deposited with trustees or depositories in accordance with bond or security documents and pledged by the board to the payment thereof, and are not an indebtedness of this state or the authority, or a charge against the general credit or general fund of the state or the authority, and the state shall not be liable for any financial undertakings with respect to the fund. Bonds issued under this chapter shall contain on their face a statement that the bonds do not constitute an indebtedness of the state or the authority.

9. The proceeds of bonds issued by the authority and not required for immediate disbursement may be deposited with a trustee or depository as provided in the bond documents and invested in any investment approved by the authority and specified in the trust indenture, resolution, or other instrument pursuant to which the bonds are issued without regard to any limitation otherwise provided by law.

10. The bonds shall be:

a. In a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, and be subject to such other terms and conditions as prescribed in the trust indenture, resolution, or other instrument authorizing their issuance.

b. Negotiable instruments under the laws of the state and may be sold at prices, at public or private sale, and in a manner, as prescribed by the authority. Chapters 73A, 74, 74A and 75 do not apply to their sale or issuance of the bonds.

c. Subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter and as determined by the trust indenture, resolution, or other instrument authorizing their issuance.

11. The bonds are securities in which public officers and bodies of this state; political subdivisions of this state; insurance companies and associations and other persons carrying on an insurance business; banks, trust companies, savings associations, savings and loan associations, and investment companies; administrators, guardians, executors, trustees, and other fiduciaries; and other persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

12. Bonds must be authorized by a trust indenture, resolution, or other instrument of the authority, approved by the board. However, a trust indenture, resolution, or other instrument authorizing the issuance of bonds may delegate to an officer of the issuer the power to negotiate and fix the details of an issue of bonds.

13. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created needs to be recorded or filed under the Iowa uniform commercial code to be valid, binding, or effective.

14. Bonds issued under the provisions of this section are declared to be issued for an essential public and governmental purpose and all bonds issued under this chapter shall be exempt from taxation by the state of Iowa and the interest on the bonds shall be exempt from the state income tax and the state inheritance and estate tax.

15. *a.* Subject to the terms of any bond documents, moneys in the fund or fund accounts may be expended for administration expenses, civil penalties, moneys paid under an agreement, stipulation, or settlement, for the costs associated with sites within a community remediation project, for costs related to contracts entered into with a state agency or university, costs for activities relating to litigation, or for the costs of any other activities as the board may determine are necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this chapter. For purposes of this chapter, administration expenses include expenses incurred by the underground storage tank section of the department of natural resources in relation to tanks regulated under this chapter.

b. The authority granted under this subsection which allows the board to expend fund moneys on an activity the board determines is necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this chapter, shall only be used in accordance with the following:

(1) Prior board approval shall be required before expenditure of moneys pursuant to this authority shall be made.

(2) If the expenditure of fund moneys pursuant to this authority would result in the board establishing a policy which would substantially affect the operation of the program, rules shall be adopted pursuant to chapter 17A prior to the board or the administrator taking any action pursuant to this proposed policy.

16. The board shall cooperate with the department of natural resources in the implementation and administration of this chapter to assure that in combination with existing state statutes and rules governing underground storage tanks, the state will be, and continue to be, recognized by the federal government as having an "approved state account" under the federal Resource Conservation and Recovery Act, especially by compliance with the Act's subtitle I financial responsibility requirements as enacted in the federal Superfund Amendments and Reauthorization Act of 1986 and the financial responsibility

regulations adopted by the United States environmental protection agency at 40 C.F.R. pts. 280 and 281. Whenever possible this chapter shall be interpreted to further the purposes of, and to comply, and not to conflict, with such federal requirements.

95 Acts, ch 215, §13
Subsection 4 amended

455G.8 Revenue sources for fund.

Revenue for the fund shall include, but is not limited to, the following, which shall be deposited with the board or its designee as provided by any bond or security documents and credited to the fund:

1. *Bonds issued to capitalize fund.* The proceeds of bonds issued to capitalize and pay the costs of the fund, and investment earnings on the proceeds except as required for the capital reserve funds.

2. *Use tax.* The revenues derived from the use tax imposed under chapter 423. The proceeds of the use tax under section 423.24, subsection 1, paragraph "a", subparagraph (1), shall be allocated, consistent with this chapter, among the fund's accounts, for debt service and other fund expenses, according to the fund budget, resolution, trust agreement, or other instrument prepared or entered into by the board or authority under direction of the board. The proceeds of the use tax under section 423.24, subsection 1, paragraph "a", subparagraph (2), shall be allocated in accordance with section 455G.21.

3. *Storage tank management fee.* That portion of the storage tank management fee proceeds which are deposited into the fund, pursuant to section 455B.479.

4. *Insurance premiums.* Insurance premium income as provided by section 455G.11 shall be credited to the insurance account.

5. *Cost recovery enforcement.* Cost recovery enforcement net proceeds as provided by section 455G.13 shall be allocated to the innocent landowners fund created under section 455G.21, subsection 2, paragraph "a". When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

6. *Other sources.* Interest attributable to investment of money in the fund or an account of the fund. Moneys in the form of a devise, gift, bequest, donation, federal or other grant, reimbursement, repayment, judgment, transfer, payment, or appropriation from any source intended to be used for the purposes of the fund.

95 Acts, ch 215, §14, 15
Subsections 2 and 5 amended

455G.9 Remedial program.

1. *Limits of remedial account coverage.* Moneys in the remedial account shall only be paid out for the following:

a. (1) Corrective action for an eligible release reported to the department of natural resources on or after July 1, 1987, but prior to May 5, 1989. Third-party liability is specifically excluded from remedial

account coverage. For a claim for a release for a small business under this subparagraph, the remedial program shall pay in accordance with subsection 4. For all other claims under this subparagraph, the remedial program shall pay the lesser of fifty thousand dollars of the total costs of corrective action for that release or total corrective action costs for that release as determined under subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

(b) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after July 1, 1987.

(c) The claim for coverage pursuant to this subparagraph must have been filed with the board prior to January 31, 1990, except that cities and counties must have filed their claim with the board by September 1, 1990.

(d) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

(2) Corrective action, up to one million dollars total, and subject to prioritization rules as established pursuant to section 455G.12A, for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990. Third-party liability is specifically excluded from remedial account coverage. Corrective action coverage provided pursuant to this paragraph may be aggregated with other financial assurance mechanisms as permitted by federal law to satisfy required aggregate and per occurrence limits of financial responsibility for both corrective action and third-party liability, if the owner's or operator's effective financial responsibility compliance date is prior to October 26, 1990. School districts who reported a release to the department of natural resources prior to December 1, 1990, shall have until July 1, 1991, to report a claim to the board for remedial coverage under this subparagraph.

(3) Corrective action for an eligible release reported to the department of natural resources on or after January 1, 1984, but prior to July 1, 1987. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release for a small business under this subparagraph, the remedial program shall pay in accordance with subsection 4. For all other claims under this subparagraph, the remedial program shall pay the lesser of fifty thousand dollars of the total costs of corrective action for that release or total corrective action costs for that release as determined under subsection 4. For a release to be eligible for coverage under this

subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage must be currently engaged in the business for which the tank connected with the release was used prior to the report of the release.

(b) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

(c) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after January 1, 1985.

(d) The claim for coverage pursuant to this subparagraph must have been filed with the board prior to September 1, 1990.

(e) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

(4) One hundred percent of the costs of corrective action for a release reported to the department of natural resources on or before July 1, 1991, if the owner or operator is not a governmental entity and is a not-for-profit organization exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code with a net annual income of twenty-five thousand dollars or less for the year 1990, and if the tank which is the subject of the corrective action is a registered tank and is under one thousand one hundred gallons capacity.

(5) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the cost of a tank system upgrade required by section 455B.474, subsection 1, paragraph "f", subparagraph (9). Payments under this subparagraph shall be limited to a maximum of ten thousand dollars for any one site.

(6) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the costs associated with monitoring required by the rules adopted under section 455B.474, subsection 1, paragraph "f", but corrective action shall exclude monitoring used for leak detection required by rules adopted under section 455B.474, subsection 1, paragraph "a".

b. Corrective action and third-party liability for a release discovered on or after January 24, 1989, for which a responsible owner or operator able to pay cannot be found and for which the federal underground storage tank trust fund or other federal moneys do not provide coverage. For the purposes of this section property shall not be deeded or quitclaimed to the state or board in lieu of cleanup. Additionally, the ability to pay shall be determined after a claim has been filed. The board is not liable for any cost where either the responsible owner or operator, or both, have a net worth greater than fifteen thousand dol-

lars, or where the responsible party can be determined. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

c. Corrective action and third-party liability for a tank owned or operated by a financial institution eligible to participate in the remedial account under section 455G.16 if the prior owner or operator is unable to pay, if so authorized by the board as part of a condition or incentive for financial institution participation in the fund pursuant to section 455G.16. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

d. One hundred percent of the costs of corrective action and third-party liability for a release situated on property acquired by a county for delinquent taxes pursuant to chapters 445 through 448, for which a responsible owner or operator able to pay, other than the county, cannot be found. A county is not a "responsible party" for a release in connection with property which it acquires in connection with delinquent taxes, and does not become a responsible party by sale or transfer of property so acquired. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

e. Corrective action for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990, in connection with a tank owned or operated by a state agency or department which elects to participate in the remedial account pursuant to this paragraph. A state agency or department which does not receive a standing unlimited appropriation which may be used to pay for the costs of a corrective action may opt, with the approval of the board, to participate in the remedial account. As a condition of opting to participate in the remedial account, the agency or department shall pay all registration fees, storage tank management fees, environmental protection charges, and all other charges and fees upon all tanks owned or operated by the agency or department in the same manner as if the agency or department were a person required to maintain financial responsibility. Once an agency has opted to participate in the remedial program, it cannot opt out, and shall continue to pay all charges and fees upon all tanks owned or operated by the agency or department so long as the charges or fees are imposed on similarly situated tanks of a person required to maintain financial responsibility. The board shall by rule adopted pursuant to chapter 17A provide the terms and conditions for a state agency

or department to opt to participate in the remedial account. A state agency or department which opts to participate in the remedial account shall be subject to the minimum copayment schedule of subsection 4, as if the state agency or department were a person required to maintain financial responsibility.

f. One hundred percent of the costs up to twenty thousand dollars incurred by the board under section 455G.12A, subsection 2, unnumbered paragraph 2, for site cleanup reports. Costs of a site cleanup report which exceed twenty thousand dollars shall be considered a cost of corrective action and the amount shall be included in the calculations for corrective action cost copayments under section 455G.9, subsection 4. The board shall have the discretion to authorize a site cleanup report payment in excess of twenty thousand dollars if the site is participating in community remediation.

g. Corrective action for the costs of a release under all of the following conditions:

(1) The property upon which the tank causing the release was situated was transferred by inheritance, devise, or bequest.

(2) The property upon which the tank causing the release was situated has not been used to store or dispense petroleum since December 31, 1975.

(3) The person who received the property by inheritance, devise, or bequest was not the owner of the property during the period of time when the release which is the subject of the corrective action occurred.

(4) The release was reported to the board by October 26, 1991.

Corrective action costs and copayment amounts under this paragraph shall be paid in accordance with subsection 4.

A person requesting benefits under this paragraph may establish that the conditions of subparagraphs (1), (2), and (3) are met through the use of supporting documents, including a personal affidavit.

h. One hundred percent of the costs of corrective action for a governmental subdivision in connection with a tank which was in place on the date the release was discovered or reported if the governmental subdivision did not own or operate the tank which caused the release and if the governmental subdivision did not obtain the property upon which the tank giving rise to the release is located on or after May 3, 1991. Property acquired pursuant to eminent domain in connection with a United States department of housing and urban development approved urban renewal project is eligible for payment of costs under this paragraph whether or not the property was acquired on or after May 3, 1991.

i. Notwithstanding section 455G.1, subsection 2, corrective action, for a release which was tested prior to October 26, 1990, and for which the site was issued a no-further-action letter by the department of natural resources and which was later determined, due to sale of the property or removal of a nonoperating tank, to require remediation which was reported to the administrator by October 26, 1992, in an amount as specified in subsection 4. In order to qualify for

benefits under this paragraph, the applicant must not have operated a tank on the property during the period of time for which the applicant owned the property and the applicant must not be a financial institution.

2. *Remedial account funding.* The remedial account shall be funded by that portion of the proceeds of the use tax imposed under chapter 423 and other moneys and revenues budgeted to the remedial account by the board.

3. *Trust fund to be established.* When the remedial account has accumulated sufficient capital to provide dependable income to cover the expenses of expected future releases or expected future losses for which no responsible owner is available, the excess capital shall be transferred to a trust fund administered by the board and created for that purpose.

4. *Minimum copayment schedule.*

a. An owner or operator who reports a release to the department of natural resources after May 5, 1989, and on or before October 26, 1990, shall be required to pay the following copayment amounts:

(1) If the owner or operator has a net worth of one hundred thousand dollars or less and owns no more than one site, the owner or operator shall pay no more than eighteen percent of the total costs of corrective action for that release. For purposes of this subparagraph, "net worth" means the fair market value of the site, which shall include an adjustment for anticipated benefits under this section.

(2) If a site's total anticipated expenses are not reserved for more than, or actual expenses do not exceed, eighty thousand dollars, the owner or operator shall pay the greater of five thousand dollars or eighteen percent of the total costs of corrective action for that release.

(3) If a site's total anticipated expenses are reserved for more than, or actual expenses exceed, eighty thousand dollars, the owner or operator shall pay the amount as designated in subparagraph (2) plus thirty-five percent of the total costs of the corrective action for that release which exceed eighty thousand dollars.

b. The remedial account shall pay the remainder, as required by federal regulations, of the total costs of the corrective action for that release, except that a county shall not be required to pay a copayment in connection with a release situated on property acquired in connection with delinquent taxes, as provided in subsection 1, paragraph "d", unless subsequent to acquisition the county actively operates a tank on the property for purposes other than risk assessment, risk management, or tank closure.

5. *Recovery of gain on sale of property.* If an owner or operator ceases to own or operate a tank site for which remedial account benefits were received within ten years of the receipt of any account benefit and sells or transfers a property interest in the tank site for an amount which exceeds one hundred twenty percent of the precorrective action value, adjusted for equipment and capital improvements,

the owner or operator shall refund to the remedial account an amount equal to ninety percent of the amount in excess of one hundred twenty percent of the precorrective action value up to a maximum of the expenses incurred by the remedial account associated with the tank site plus interest, equal to the interest for the most recent twelve-month period for the most recent bond issue for the fund, on the expenses incurred, compounded annually. An owner or operator under this subsection shall notify the board of the sale or transfer of the property interest in the tank site. Expenses incurred by the fund are a lien upon the property recordable and collectible in the same manner as the lien provided for in section 424.11 at the time of sale or transfer, subject to the terms of this section.

This subsection shall not apply if the sale or transfer is pursuant to a power of eminent domain, or benefits. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

6. *Recurring releases treated as a newly reported release.* A release shall be treated as a release reported on or after May 5, 1989, if prior to May 5, 1989, a release was reported to the department, corrective action was taken pursuant to a site cleanup report approved by the department, and the work performed was accepted by the department. For purposes of this subsection, work performed is accepted by the department if the department did not order further action within ninety days of the date on which the department had notice that the work was completed, unless the department clearly indicated in writing to the owner, operator, contractor, or other agent that additional work would be required beyond that specified in the site cleanup report or in addition to the work actually performed.

7. *Expenses of cleanup not required.* When an owner or operator who is eligible for benefits under this chapter is allowed by the department of natural resources to monitor in place, the expenses incurred for cleanup beyond the level required by the department of natural resources are not covered under any of the accounts established under the fund. The cleanup expenses incurred for work completed beyond what is required is the responsibility of the person contracting for the excess cleanup.

8. *Owner or operator defined.* For purposes of receiving benefits under this section, "owner or operator" means the then current tank owner or operator or the owner of the land for which a covered release was reported or application for benefits was submitted on or before the relevant application deadlines of this section.

9. *Self-insureds.* For a self-insured as determined under 567 IAC 136.6(455B), to qualify for remedial benefits under this section, tanks shall be upgraded by January 1, 1995, as specified by the United States environmental protection agency in 40 C.F.R. § 280.21, as amended through January 1, 1989. A self-insured who qualifies for benefits under

this section shall repay any benefits received if the upgrade date is not met.

95 Acts, ch 215, §16, 17

Subsection 4, paragraph a amended

Subsection 5 stricken and former subsections 6-10 renumbered as 5-9

455G.10 Loan guarantee account.

1. The board may create a loan guarantee account to offer loan guarantees for the following purposes:

a. All or a portion of the expenses incurred by the applicant for its share of corrective action.

b. Tank and monitoring equipment improvements necessary to satisfy federal technical standards to become insurable.

c. Capital improvements made on a tank site.

d. Purchase of a leaking underground storage tank site.

Moneys from the revenues derived from the use tax under section 423.24, subsection 1, paragraph "a", subparagraph (1), may be used to fund the loan guarantee account according to the fund budget as approved by the board. Loan guarantees shall be made on terms and conditions determined by the board to be reasonable, except that in no case may a loan guarantee satisfy more than ninety percent of the outstanding balance of a loan.

2. A separate nonlapsing loan guarantee account is created within the fund. Any funds remaining in the account at the end of each fiscal year shall not revert to the general fund but shall remain in the account. The loan account shall be maintained by the treasurer of state. All expenses incurred by the loan account shall be payable solely from the loan account and no liability or obligation shall be imposed upon the state beyond this amount.

3. The board shall administer the loan guarantee account. The board may delegate administration of the account, provided that the administrator is subject to the board's direct supervision and direction. The board shall adopt rules regarding the provision of loan guarantees. The board may impose such terms and conditions as it deems reasonable and necessary or appropriate. The board shall take appropriate steps to publicize the existence of the loan account.

4. In calculating the net worth of an applicant for a loan guarantee, the board shall use the fair market value of any property on which a tank is sited, and not the precorrective action value required for recovery of gain upon later sale of the same property under section 455G.9, subsection 5.

5. As a condition of eligibility for financial assistance from the loan guarantee account, an applicant shall demonstrate satisfactory attempts to obtain financing from private lending sources. When applying for loan guarantee account assistance, the applicant shall demonstrate good faith attempts to obtain financing from at least two financial institutions. The board may first refer a tank owner or operator to a financial institution eligible to participate in the fund under section 455G.16; however, if no such financial institution is currently willing or able to

make the required loan, the applicant shall determine if any of the previously contacted financial institutions would make the loan in participation with the loan guarantee account. The loan guarantee account may offer to guarantee a loan, or provide other forms of financial assistance to facilitate a private loan.

6. The maturity for each financial assistance package made by the board pursuant to this chapter shall be the shortest feasible term commensurate with the repayment ability of the borrower. However, the maturity date of a loan shall not exceed twenty years and the guarantee is ineffective beyond the agreed term of the guarantee or twenty years from initiation of the guarantee, whichever term is shorter.

7. The source of funds for the loan account shall be from the following:

a. Loan guarantee account income, including loan guarantee service fees, if any, and investment income attributed to the account by the board.

b. Moneys allocated to the account by the board according to the fund budget approved by the board.

c. Moneys appropriated by the federal government or general assembly and made available to the loan account.

8. A loan loss reserve account shall be established within the loan guarantee account. A default on a loan guaranteed under this section shall be paid from such reserve account. In administering the program, the board shall periodically determine the necessary loan loss reserve needed and shall set aside the appropriate moneys in the loan loss reserve account for payment of loan defaults. This reserve shall be determined based on the credit quality of the outstanding guaranteed loans at the time that the reserve requirement is being determined. A default is not eligible for payment until the lender has satisfied all administrative and legal remedies for settlement of the loan and the loan has been reduced to judgment by the lender. After the default has been reduced to judgment and the guarantee paid from the reserve account, the board is entitled to an assignment of the judgment. The board shall take all appropriate action to enforce the judgment or may enter into an agreement with the lender to provide for enforcement. Upon collection of the amount guaranteed, any excess collected shall be deposited into the fund. The general assembly is not obligated to appropriate any moneys to pay for any defaults or to appropriate any moneys to be credited to the reserve account. The loan guarantee program does not obligate the state or the board except to the extent provided in this section, and the board in administering the program shall not give or lend the credit of the state of Iowa.

95 Acts, ch 215, §18

Subsections 1, 3, 5 and 6 amended

455G.11 Insurance account.

1. *Insurance account as a financial assurance mechanism.* The insurance account shall offer financial assurance for a qualified owner or operator

under the terms and conditions provided for under this section. Coverage may be provided to the owner or the operator, or to each separately. The board is not required to resolve whether the owner or operator, or both are responsible for a release under the terms of any agreement between the owner and operator.

The source of funds for the insurance account shall be from the following:

a. Moneys allocated to the board or moneys allocated to the account by the board according to the fund budget approved by the board.

b. Moneys collected as an insurance premium including service fees, if any, and investment income attributed to the account by the board.

2. *Limits of coverage available.* An owner or operator required to maintain proof of financial responsibility may purchase coverage up to the federally required levels for that owner or operator subject to the terms and conditions under this section and those adopted by the board.

3. *Eligibility of owners and operators for insurance account coverage.* An owner or operator, subject to underwriting requirements and such terms and conditions deemed necessary and convenient by the board, may purchase insurance coverage from the insurance account to provide proof of financial responsibility provided that a tank to be insured satisfies one of the following conditions:

a. Satisfies performance standards for new underground storage tank systems as specified by the federal environmental protection agency in 40 C.F.R. § 280.20, as amended through January 1, 1989.

b. Has satisfied on or before the date of the application standards for upgraded underground storage tank systems as specified by the federal environmental protection agency in 40 C.F.R. § 280.21, as amended through January 1, 1989.

c. The applicant certifies in writing to the board that the tank to be insured will be brought into compliance with either paragraph "a" or "b", on or before December 22, 1998, provided that prior to the provision of insurance account coverage, the tank site tests release free. An owner or operator who fails to comply as certified to the board on or before December 22, 1998, shall not insure that tank through the insurance account unless and until the tank satisfies the requirements of paragraph "a" or "b". An owner or operator who fails to comply with either paragraph "a" or "b" by October 26, 1993, or who fails to enter into a contract on or before October 26, 1993, which, upon completion, will bring the owner or operator into compliance with either paragraph "a" or "b" by December 22, 1998, may be eligible for financial assurance under this section but shall be subject to an additional surcharge of eight hundred dollars per tank in addition to payment of a premium that is equal to two times the cost of the premium required under subsection 4, paragraph "g", per insured time period.

d. The applicant either:

(1) Is maintaining financial responsibility pursuant to current or previously applicable federal or

state financial responsibility requirements on petroleum underground storage tanks within the state.

(2) Complies with the applicable following date for financial responsibility:

(a) On or before April 26, 1990, for a petroleum marketing firm owning at least thirteen, but no more than ninety-nine petroleum underground storage tanks.

(b) On or before October 26, 1990, for an owner or operator not described in subparagraph subdivision (a), and not currently or previously required to maintain financial responsibility by federal or state law on tanks within the state.

4. *Actuarially sound premiums based on risk factor adjustments after five years.* The annual premium for insurance coverage shall be:

a. For the year July 1, 1989, through June 30, 1990, one hundred dollars per tank.

b. For the year July 1, 1990, through June 30, 1991, one hundred fifty dollars per tank.

c. For the year July 1, 1991, through June 30, 1992, two hundred dollars per tank.

d. For the year July 1, 1992, through June 30, 1993, two hundred fifty dollars per tank.

e. For the year July 1, 1993, through June 30, 1994, in accordance with the following:

(1) For a tank satisfying subsection 3, paragraph "a" or "b", three hundred dollars per tank.

(2) For a tank qualifying under subsection 3, paragraph "c", six hundred dollars per tank.

f. For the period from July 1, 1994, through December 31, 1994, in accordance with the following:

(1) For a tank satisfying subsection 3, paragraph "a" or "b", three hundred fifty dollars per tank.

(2) For a tank qualifying under subsection 3, paragraph "c", seven hundred dollars per tank.

g. For subsequent time periods, an owner or operator applying for coverage shall pay an annually adjusted insurance premium for coverage by the insurance account. The board may only approve fund coverage through the payment of a premium established on an actuarially sound basis. Risk factors shall be taken into account in establishing premiums. It is the intent of the general assembly that an actuarially sound premium reflect the risk to the insurance account presented by the insured. Risk factor adjustments should reflect the range of risk presented by the variety of tank systems, monitoring systems, and risk management practices in the general insurable tank population. Premium adjustments for risk factors should at minimum take into account lifetime costs of a tank and monitoring system and insurance account premiums for that tank system so as to provide a positive economic incentive to the owner or operator to install the more environmentally safe option so as to reduce the exposure of the insurance account to loss. Actuarially sound is not limited in its meaning to fund premium revenue equaling or exceeding fund expenditures for the general tank population.

Tanks receiving financial assurance pursuant to subsection 3, paragraph "c", shall not be included in the general tank population for purposes of deter-

mining actuarially sound premiums under this paragraph.

If coverage is purchased for any part of a year the purchaser shall pay the full annual premium.

h. The insurance account may offer, at the buyer's option, a range of deductibles. A ten thousand dollar deductible policy shall be offered.

5. Future repeal. The future repeal of this section shall not terminate the following obligations or authorities necessary to administer the obligations until these obligations are satisfied:

a. The payment of claims filed prior to the effective date of any future repeal, against the insurance account until moneys in the account are exhausted. Upon exhaustion of the moneys in the account, any remaining claims shall be invalid.

b. The resolution of a cost recovery action filed prior to the effective date of the repeal.

6. Installer's and inspector's insurance coverage.

a. Coverage. The board shall offer insurance coverage under the fund's insurance account to installers and inspectors of certified underground storage tank installations within the state for an environmental hazard arising in connection with a certified installation as provided in this subsection. Coverage shall be limited to environmental hazard coverage for both corrective action and third-party liability for a certified tank installation within the state in connection with a release from that tank.

b. Annual premiums. The annual premium shall be:

(1) For the year July 1, 1991, through June 30, 1992, two hundred dollars per insured tank.

(2) For the year July 1, 1992, through June 30, 1993, two hundred fifty dollars per insured tank.

(3) For the year July 1, 1993, through June 30, 1994, three hundred dollars per insured tank.

(4) For the period from July 1, 1994, through December 31, 1994, three hundred fifty dollars per insured tank.

(5) For subsequent time periods, installers and inspectors shall pay an annually adjusted insurance premium to maintain coverage on each tank previously installed or newly insured by the insurance account. The board may only approve fund coverage through the payment of a premium established on an actuarially sound basis. The premium paid shall be fully earned and is not subject to refund or cancellation. If coverage is purchased for any part of a year the purchaser shall pay the full annual premium.

(6) The board may offer coverage at rates based on sales if the qualifying installer or inspector cannot be rated on a per tank basis, or if the work the installer or inspector performs involves more than tank installation. The rates to develop premiums shall be based on the premium charged per tank under subparagraphs (1), (2), (3), and (4).

c. Limits of coverage available. Installers and inspectors may purchase coverage up to one million dollars per occurrence and two million dollars aggregate, subject to the terms and conditions under this section and those adopted by the board.

d. Deductible. The insurance account may offer, at the buyer's option, a range of deductibles. A ten thousand dollar deductible policy shall be offered.

e. Excess coverage. Installers and inspectors may purchase excess coverage of up to five million dollars upon such terms and conditions as determined by the board.

f. Certification of tank installations. The board shall adopt certification rules requiring certification of a new tank installation as a precondition to offering insurance to an owner or operator or an installer or inspector. The board shall set in the rule the effective date for the certification requirement. Certification rules shall at minimum require that an installation be personally inspected by an independent licensed engineer, local fire marshal, state fire marshal's designee, or other person who is unaffiliated with the tank owner, operator, installer or inspector, who is qualified and authorized by the board to perform the required inspection and that the tank and installation of the tank comply with applicable technical standards and manufacturer's instructions and warranty conditions. An inspector may be an owner or operator of a tank, or an employee of an owner, operator, or installer.

7. Coverage alternatives. The board shall provide for insurance coverage to be offered to installers and inspectors for a tank installation certified pursuant to subsection 6, through both of the following methods:

a. Directly through the fund with premiums and deductibles as provided in subsection 6.

b. In cooperation with a private insurance carrier with excess or stop loss coverage provided by the fund to reduce the cost of insurance to such installers or inspectors, and including such other terms and conditions as the board deems necessary and convenient to provide adequate coverage for a certified tank installation at a reasonable premium. An installer or inspector obtaining insurance coverage pursuant to this paragraph, may purchase excess coverage of up to five million dollars, subject to the terms and conditions as determined by the board.

The insurance coverage offered pursuant to this subsection shall, at a minimum, cover environmental hazards for both corrective action and third-party liability.

8. Account expenditures. Moneys in the insurance account may be expended to take corrective action for and to compensate a third party for damages, including but not limited to payment of a judgment for bodily injury or property damage caused by a release from a tank, where coverage has been provided to the owner or operator from the insurance account, up to the limits of coverage extended. A personal injury is not a compensable third-party liability damage.

9. Conditions to receive premium discount. A person engaged in the wholesale or retail sale of petroleum shall receive a discount of eight percent on that person's annual insurance premium for all tanks located at a site which meets all of the following conditions:

a. The person maintains a tank for the purpose of storing waste oil.

b. The person accepts waste oil from the general public.

c. The person posts a notice at the site in a form and manner approved by the administrator advertising that the person will accept waste oil from the general public.

10. *Property transfer insurance.*

a. Additional cleanup requirements. An owner, operator, landowner, or financial institution may purchase insurance coverage under the insurance account to cover environmental damage caused by a tank in the event that governmental action requires additional cleanup beyond that which was required at the time a no further action certificate or a monitoring certificate was issued under section 455B.474, subsection 1, paragraph "h".

b. Eligibility for coverage. An owner, operator, landowner, or financial institution, subject to underwriting requirements and such terms and conditions deemed necessary and convenient by the board, may purchase insurance coverage from the insurance account to provide proof of financial responsibility if the following conditions are satisfied:

(1) A no further action certificate or a monitoring certificate has been issued for the site under section 455B.474, subsection 1, paragraph "h". Property transfer coverage shall be effective on a monitored site only for the time period for which monitoring is allowed as specified in the monitoring certificate. A site which has not been issued a no further action certificate or a monitoring certificate shall not be eligible for property transfer coverage.

(2) The tank location is not covered by other environmental hazard liability insurance coverage, or is eligible for remedial benefits as provided under section 455G.9.

(3) The environmental damage is not caused by a new release.

(4) The additional cleanup is mandated by governmental action requiring cleanup beyond that which was required at the time a no further action certificate or a monitoring certificate under section 455B.474, subsection 1, paragraph "h", was issued for a site.

c. Premiums. The annual premium for insurance coverage shall be two hundred fifty dollars per party, per location, with an overall limit of liability per site of five hundred thousand dollars. The premiums are fully earned. Each party purchasing coverage at that site will have the total limit of liability prorated over the total limit among the policies issued, so as to avoid stacking beyond the total coverage limit of five hundred thousand dollars. If coverage is purchased for any part of a year, the purchaser shall pay the full annual premium.

After December 31, 1994, an owner, operator, landowner, or financial institution applying for coverage shall pay an annually adjusted insurance premium for coverage by the insurance account. The board may only approve fund coverage through the payment of a premium established on an actuarially sound basis.

d. Coverage exclusions. Property transfer insurance coverage offered under this subsection does not include coverage of the following:

(1) Third-party liability.

(2) Cleanup beyond the actual costs associated with the site.

(3) Loss of use of the property and other economic damages.

(4) Costs associated with additional remediation required by a voluntary change in usage of the site.

e. Annual monitoring. Annual monitoring is required for any site for which coverage is purchased. Failure to comply with monitoring as prescribed by the board will invalidate insurance coverage under this subsection. For a site which has been issued a monitoring certificate, the annual monitoring requirements imposed under this paragraph shall be satisfied by the annual monitoring requirements imposed under the corrective action rules for a site which is allowed to monitor in place.

f. Transfer of coverage. Coverage may be transferred upon payment of a transfer fee.

g. Rules. The board shall adopt rules pursuant to chapter 17A as necessary to implement this subsection.

11. *Limitations on third-party liability.* To the extent that coverage under this section includes third-party liability, third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

95 Acts, ch 215, §19-25
 1995 amendments to subsections 3 and 4 apply retroactively to January 1, 1995; 95 Acts, ch 215, §33
 Subsection 3, paragraph c amended
 Subsection 4, paragraph g, NEW unnumbered paragraph 2
 Subsection 5, paragraph a stricken and rewritten
 Subsection 10, paragraph a amended
 Subsection 10, paragraph b, subparagraphs (1) and (4) amended
 Subsection 10, paragraph d, subparagraph (5) stricken
 Subsection 10, paragraph h stricken

455G.18 Groundwater professionals — certification.

1. The department of natural resources shall adopt rules pursuant to chapter 17A requiring the certification of groundwater professionals. The rules shall include provisions for suspension or revocation of certification for good cause.

2. A groundwater professional is a person who provides subsurface soil contamination and groundwater consulting services or who contracts to perform remediation or corrective action services and is one or more of the following:

a. A person certified by the American institute of hydrology, the national water well association, the American board of industrial hygiene, or the association of groundwater scientists and engineers.

b. A professional engineer registered in Iowa.

c. A professional geologist certified by a national organization.

d. Any person who has five years of direct and related experience and training as a groundwater

professional or in the field of earth sciences as of June 10, 1991.

e. Any other person with a license, certification, or registration to practice hydrogeology or groundwater hydrology issued by any state in the United States or by any national organization, provided that the license, certification, or registration process requires, at a minimum, all of the following:

(1) Possession of a bachelor's degree from an accredited college.

(2) Five years of related professional experience.

3. The department of natural resources may provide for a civil penalty of no more than fifty dollars for failure to obtain certification. An interested person may obtain a list of certified groundwater professionals from the department of natural resources. The department of natural resources may impose a fee for the certification of persons under this section.

4. The certification of groundwater professionals shall not impose liability on the board, the department, or the fund for any claim or cause of action of any nature, based on the action or inaction of groundwater professionals certified pursuant to this section.

5. Any person who was not previously registered as a groundwater professional who requests certification under this section, after January 1, 1996, shall be required to attend a course of instruction and pass a certification examination. The administrator of the fund shall hold certification courses and offer examinations. An applicant who successfully passes the examination shall be certified as a groundwater professional.

6. A groundwater professional who was registered prior to January 1, 1996, shall not be required to attend the course of instruction but shall be required to pass the certification examination by January 1, 1997.

7. All groundwater professionals shall be required to complete continuing education requirements as adopted by rule by the department.

8. The board may provide for exemption from the certification requirements of this section for a professional engineer registered pursuant to chapter 542B, if the person is qualified in the field of geotechnical, hydrological, environmental groundwater, or hydrogeological engineering.

9. Notwithstanding the certification requirements of this section, a site cleanup report or corrective action design report submitted by a registered groundwater professional shall be accepted by the department in accordance with section 455B.474, subsection 1, paragraph "d", subparagraph (2), subparagraph subdivision (e), and paragraph "f", subparagraph (5).

95 Acts, ch 215, §27
Partial item veto applied
Section amended

455G.19 Environmental damage offset. Repealed by 95 Acts, ch 215, § 29.

455G.21 Marketability fund.

1. A marketability fund is created as a separate fund in the state treasury under the control of the board. The board shall administer the marketability fund. Notwithstanding section 8.33, moneys remaining in the marketability fund at the end of each fiscal year shall not revert to the general fund but shall remain in the marketability fund. The marketability fund shall include the following:

a. Moneys allocated to the fund pursuant to section 423.24, subsection 1, paragraph "a", subparagraph (2).

b. Notwithstanding section 12C.7, interest earned by the marketability fund or other income specifically allocated to the marketability fund.

2. The marketability fund shall be used for the following purposes:

a. Five million dollars per year shall be allocated to the innocent landowners fund which shall be established as a separate fund in the state treasury under the control of the board. The innocent landowners fund shall also include any moneys recovered pursuant to cost recovery enforcement under section 455G.13. Notwithstanding section 455G.1, subsection 2, benefits for the costs of corrective action shall be provided to the owner of a petroleum-contaminated property, who is not otherwise eligible to receive benefits under section 455G.9. An owner of a petroleum-contaminated property shall be eligible for payment of total corrective action costs subject to copayment requirements under section 455G.9, subsection 4, paragraph "a", subparagraphs (1) and (2). The board may adopt rules conditioning receipt of benefits under this paragraph to those petroleum-contaminated properties which present a higher degree of risk to the public health and safety or the environment and may adopt rules providing for denial of benefits under this paragraph to a person who did not make a good faith attempt to comply with the provisions of this chapter. This paragraph does not confer a legal right to an owner of petroleum-contaminated property for receipt of benefits under this paragraph.

b. The remainder of the moneys shall be used for payment of remedial benefits as provided in section 455G.9.

3. Moneys in the fund shall not be used for purposes of bonding or providing security for bonding under chapter 455G.

95 Acts, ch 215, §28
Effective January 1, 1996; 95 Acts, ch 215, §34
NEW section

CHAPTER 456A

REGULATION AND FUNDING — NATURAL RESOURCES DEPARTMENT

456A.17 Funds — restrictions.

The following four funds are created in the state treasury:

1. A state fish and game protection fund.
2. A state conservation fund.
3. An administration fund.
4. A county conservation board fund.

The state fish and game protection fund, except as otherwise provided, consists of all moneys accruing from license fees and all other sources of revenue arising under the fish and wildlife division. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the state fish and game protection fund shall be credited to that fund.

The county conservation board fund consists of all moneys credited to it by law or appropriated to it by the general assembly.

The conservation fund, except as otherwise provided, consists of all other funds accruing to the department for the purposes embraced by this chapter.

The administration fund shall consist of an equitable portion of the gross amount of the state fish and game protection fund and the state conservation fund, to be determined by the commission, sufficient to pay the expense of administration entailed by this chapter.

All receipts and refunds and reimbursements related to activities funded by the administration fund are appropriated to the administration fund. All refunds and reimbursements relating to activities of the state fish and game protection fund shall be credited to the state fish and game protection fund.

The department may apply for a loan for the construction of facilities for the collection and treatment of waste water under the state sewage treatment works financing program as established in sections 455B.291 through 455B.299. In order to provide for the repayment of a loan granted under the financing program, the commission may impose a lien on not more than ten percent of the annual revenues from user fees and related revenue derived from park and recreation areas under chapter 461A which are deposited in the state conservation fund. If a lien is

established as provided in this paragraph, repayment of the loan is the first priority on the revenues received and dedicated for the loan repayment each year.

95 Acts, ch 98, §2
NEW unnumbered paragraph 7

456A.19 Expenditures.

All funds accruing to the fish and game protection fund, except an equitable portion of the administration fund, shall be expended solely in carrying on the activities embraced in the fish and wildlife division. Expenditures incurred by the division in carrying on the activities shall be only on authorization by the general assembly.

The department shall by October 1 of each year submit to the department of management for transmission to the general assembly a detailed estimate of the amount required by the department during the succeeding year for carrying on the activities embraced in the fish and wildlife division. The estimate shall be in the same general form and detail as required by law in estimates submitted by other state departments.

Any unexpended balance at the end of the biennium shall revert to the fish and game protection fund.

All administrative expense shall be paid from the administration fund.

All other expenditures shall be paid from the conservation fund.

All expenditures under this chapter are subject to approval by the director of management and the director of revenue and finance.

All moneys credited to the county conservation board fund shall be used to provide grants to county conservation boards to provide funding for the purposes of chapter 350. These grants are in addition to moneys appropriated to the conservation boards from the county boards of supervisors. The grants shall be made to the conservation boards based upon the needs of the boards. Applications shall be made by the boards to the commission.

95 Acts, ch 214, §22
Unnumbered paragraph 2 amended

CHAPTER 462A

WATER NAVIGATION REGULATIONS

462A.78 Fees — surcharge — duplicates.

1. *a.* The county recorder shall charge a five dollar fee to issue a certificate of title, a transfer of title, a duplicate, or a corrected certificate of title.
1. *b.* In addition to the fee required under para-

graph "a", and sections 462A.82 and 462A.84, a surcharge of five dollars shall be required.

2. If a certificate of title is lost, stolen, mutilated, destroyed, or becomes illegible, the first lienholder or, if there is none, the owner named in the certificate,

as shown by the county recorder's records, shall within thirty days obtain a duplicate by applying to the county recorder. The applicant shall furnish information the department requires concerning the original certificate and the circumstances of its loss, mutilation, or destruction. Mutilated or illegible certificates shall be returned to the department with the application for a duplicate.

3. The duplicate certificate of title shall be marked plainly "duplicate" across its face, and mailed or delivered to the applicant.

4. If a lost or stolen original certificate of title for which a duplicate has been issued is recovered, the

original shall be surrendered promptly to the department for cancellation.

5. The funds collected under subsection 1, paragraph "a", shall be placed in the general fund of the county and used for the expenses of the county conservation board if one exists in that county. Of each surcharge collected as required under subsection 1, paragraph "b", the county recorder shall remit five dollars to the department of revenue and finance for deposit in the general fund of the state.

95 Acts, ch 219, §42
Subsection 5 amended

CHAPTER 468

LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS

468.57 Installment payments — waiver.

If the owner of any land against which a levy exceeding one hundred dollars has been made and certified shall, within thirty days from the date of such levy, agree in writing endorsed upon any improvement certificate referred to in section 468.70, or in a separate agreement, that in consideration of having a right to pay the owner's assessment in installments, the owner will not make any objection as to the legality of the assessment for benefit, or the levy of the taxes against the property, then such owner shall have the following options:

1. To pay one-third of the amount of the assessment at the time of filing the agreement; one-third within twenty days after the engineer in charge certifies to the auditor that the improvement is one-half completed; and the remaining one-third within twenty days after the improvement has been completed and accepted by the board. All installments shall be without interest if paid at said times, otherwise the assessments shall bear interest from the date of the levy at a rate determined by the board notwithstanding chapter 74A, payable annually, and be collected as other taxes on real estate, with like interest for delinquency.

2. To pay the assessments in not less than ten nor more than twenty equal installments, with the number of payments and interest rate determined by the board, notwithstanding chapter 74A. The first installment of each assessment, or the total amount if less than one hundred dollars, is due and payable on July 1 next succeeding the date of the levy, unless the assessment is filed with the county treasurer after May 31 in any year. The first installment shall bear interest on the whole unpaid assessment from the date of the levy as set by the board to the first day of December following the due date. The succeeding annual installments, with interest on the whole unpaid amount, to the first day of December following the due date, are respectively due on July 1 annually,

and must be paid at the same time and in the same manner as the first semiannual payment of ordinary taxes. All future installments of an assessment may be paid on any date by payment of the then outstanding balance plus interest accrued to the date of payment. Each installment of an assessment with interest on the unpaid balance is delinquent from October 1 after its due date, including those instances when the last day of September is a Saturday or Sunday, and bears the same delinquent interest as ordinary taxes. When collected, the interest must be credited to the same drainage fund as the drainage special assessment.

The provisions of this section and of sections 468.58 through 468.61 may within the discretion of the board, also be made applicable to repairs and improvements made under the provisions of section 468.126.

95 Acts, ch 57, §24
Subsection 2, unnumbered paragraph 1 amended

468.101 Completion of work — report — notice.

When the work to be done under a contract is completed to the satisfaction of the engineer in charge of construction, the engineer shall report and certify that the contract is completed to the board. Upon receipt of the report, the board shall set a day to consider the report and shall give notice of the time and purpose of the meeting by ordinary mail to the owners of the land on which the work was done, and to the owners of each tract of land or lot within the district by publication in a newspaper of general circulation in the county. The publication is not required to name the owners of any tract of land or lot within the district. The date for considering the report by the board shall be not less than ten days after the date of mailing, or publication, whichever is later.

95 Acts, ch 47, §1
Section amended

CHAPTER 474

UTILITIES DIVISION

474.1 Creation of division and board — organization.

A utilities division is created within the department of commerce. The policymaking body for the division is the utilities board which is created within the division. The board is composed of three members appointed by the governor and subject to confirmation by the senate, not more than two of whom shall be from the same political party. Each member appointed shall serve for six-year staggered terms beginning and ending as provided by section 69.19. Vacancies shall be filled for the unexpired portion of the term in the same manner as full-term appointments are made.

The utilities board shall organize by appointing an executive secretary, who shall take the same oath as the members. The board shall set the salary of the executive secretary within the limits of the pay plan for exempt positions provided for in section 19A.9, subsection 2, unless otherwise provided by the general assembly. The board may employ additional personnel as it finds necessary. Subject to confirma-

tion by the senate, the governor shall appoint a member as the chairperson of the board. The chairperson shall be the administrator of the utilities division. The appointment as chairperson shall be for a two-year term which begins and ends as provided in section 69.19.

As used in this chapter and chapters 475A, 476, 476A, 478, 479, 479A, and 479B, "division" and "utilities division" mean the utilities division of the department of commerce.

95 Acts, ch 192, §3
Unnumbered paragraph 3 amended

474.9 General jurisdiction of utilities board.

The utilities board has general supervision of all pipelines and all lines for the transmission, sale, and distribution of electrical current for light, heat, and power pursuant to chapters 476, 476A, 478, 479, 479A, and 479B and has other duties as provided by law.

95 Acts, ch 192, §4
Section amended

CHAPTER 476

PUBLIC UTILITY REGULATION

476.1D Regulation and deregulation of communications services.

1. Except as provided in this section, the jurisdiction of the board as to the regulation of communications services is not applicable to a service or facility that is provided or is proposed to be provided by a telephone utility that is or becomes subject to effective competition, as determined by the board. In determining whether a service or facility is or becomes subject to effective competition, the board shall consider, among other factors, whether a comparable service or facility is available from a supplier other than the telephone utility and whether market forces are sufficient to assure just and reasonable rates without regulation.

2. Deregulation of a service or facility for a utility is effective only after all of the following:

- a. A finding of effective competition by the board.
- b. Election by a utility providing the service or facility to file a deregulation accounting plan.
- c. Approval of a utility's deregulation accounting plan by the board.

3. If the board determines a service or facility is subject to effective competition and approves the utility's deregulation accounting plan, the board shall deregulate the service or facility within a reasonable time.

4. Upon deregulation, all investment, revenues, and expenses associated with the service or facility shall be removed from the telephone utility's regulated operations and shall not be considered by the board in setting rates for the telephone utility unless they continue to affect the utility's regulated operations. If the board considers investment, revenues, and expenses associated with unregulated services or facilities in setting rates for the telephone utility, the board shall not use any profits or costs from such unregulated services or facilities to determine the rates for regulated services or facilities. This section does not preclude the board from considering the investment, revenues, and expenses associated with the sale of classified directory advertising by a telephone utility in determining rates for the telephone utility.

5. Notwithstanding the presence of effective competition, if the board determines a service or facility is an essential communications service or facility and the public interest warrants retention of service regulation, the board shall deregulate rates and may continue service regulation.

6. The board may reimpose rate and service regulation on a deregulated service or facility if it determines the service or facility is no longer subject to effective competition.

7. The board may reimpose service regulation only on a deregulated service or facility if the board determines the service or facility is an essential communications service or facility and the public interest warrants service regulation, notwithstanding the presence of effective competition.

8. If the board reimposes regulation pursuant to subsection 6 or 7, the reimposition of regulation shall apply to all providers of the service or facility.

9. The board may investigate and obtain information from providers of deregulated services or facilities to determine whether the services or facilities are subject to effective competition or whether the service or facility is an essential communications service or facility and the public interest warrants service regulation. However, the board shall not, for purposes of this subsection, request or obtain information related to the provider's costs or earnings.

10. The board, at the request of a long distance telephone company, shall classify such company as a competitive long distance telephone company if more than half of the company's revenues from its Iowa intrastate telecommunications services and facilities are received from services and facilities that the board has determined to be subject to effective competition. The board shall promptly notify the director of revenue and finance that a long distance telephone company has been classified as a competitive long distance telephone company. Upon such notification by the board, the director of revenue and finance shall assess the property of such competitive long distance telephone company, which property is first assessed for taxation in this state on or after January 1, 1996, in the same manner as all other property assessed as commercial property by the local assessor under chapters 427, 427A, 427B, 428, and 441. As used in this section, "*long distance telephone company*" means an entity that provides telephone service and facilities between local exchanges, but does not include a cellular service provider or a local exchange utility holding a certificate issued under section 476.29, subsection 12.

⁹⁵ Acts, ch 199, §1
NEW subsection 10

476.3 Complaints — investigation — refunds.

1. A public utility shall furnish reasonably adequate service at rates and charges in accordance with tariffs filed with the board. When there is filed with the board by any person or body politic, or filed by the board upon its own motion, a written complaint requesting the board to determine the reasonableness of the rates, charges, schedules, service, regulations, or anything done or omitted to be done by a public utility subject to this chapter in contravention of this chapter, the written complaint shall be forwarded by the board to the public utility, which shall be called upon to satisfy the complaint or to answer it in writing within a reasonable time to be specified by the board. Copies of the written complaint forwarded by the board to the public utility and copies of all correspondence from the public utility in

response to the complaint shall be provided by the board in an expeditious manner to the consumer advocate. If the board determines the public utility's response is inadequate and there appears to be any reasonable ground for investigating the complaint, the board shall promptly initiate a formal proceeding. If the consumer advocate determines the public utility's response to the complaint is inadequate, the consumer advocate may file a petition with the board which shall promptly initiate a formal proceeding if the board determines that there is any reasonable ground for investigating the complaint. The complainant or the public utility also may petition the board to initiate a formal proceeding which petition shall be granted if the board determines that there is any reasonable ground for investigating the complaint. The formal proceeding may be initiated at any time by the board on its own motion. If a proceeding is initiated upon petition filed by the consumer advocate, complainant, or the public utility, or upon the board's own motion, the board shall set the case for hearing and give notice as it deems appropriate. When the board, after a hearing held after reasonable notice, finds a public utility's rates, charges, schedules, service, or regulations are unjust, unreasonable, discriminatory, or otherwise in violation of any provision of law, the board shall determine just, reasonable, and nondiscriminatory rates, charges, schedules, service, or regulations to be observed and enforced.

2. If, as a result of a review procedure conducted under section 476.31, a review conducted under section 476.32, a special audit, an investigation by division staff, or an investigation by the consumer advocate, a petition is filed with the board by the consumer advocate, alleging that a utility's rates are excessive, the disputed amount shall be specified in the petition. The public utility shall, within the time prescribed by the board, file a bond or undertaking approved by the board conditioned upon the refund in a manner prescribed by the board of amounts collected after the date of filing of the petition in excess of rates or charges finally determined by the board to be lawful. If upon hearing the board finds that the utility's rates are unlawful, the board shall order a refund, with interest, of amounts collected after the date of filing of the petition that are determined to be in excess of the amounts which would have been collected under the rates finally approved. However, the board shall not order a refund that is greater than the amount specified in the petition, plus interest, and if the board fails to render a decision within ten months following the date of filing of the petition, the board shall not order a refund of any excess amounts that are collected after the expiration of that ten-month period and prior to the date the decision is rendered.

Notwithstanding the provisions of this subsection, the consumer advocate shall not file a petition under this subsection that alleges a local exchange carrier's rates are excessive while the local exchange carrier is participating in a price regulation plan approved by the board pursuant to section 476.97.

3. A determination of utility rates by the board pursuant to this section that is based upon a departure from previously established regulatory principles shall apply prospectively from the date of the decision.

95 Acts, ch 199, §2
Subsection 2, NEW unnumbered paragraph 2

476.10 Investigations — expense — appropriation.

When the board deems it necessary in order to carry out the duties imposed upon it by this chapter for the purpose of determining rate matters to investigate the books, accounts, practices, and activities of, or make appraisals of the property of any public utility, or to render any engineering or accounting services to any public utility, or to review the operations or annual reports of the public utility under section 476.31 or 476.32, or to evaluate a proposal for reorganization under section 476.77, the public utility shall pay the expense reasonably attributable to the investigation, appraisal, service, or review. The board shall ascertain the expenses including certified expenses incurred by the consumer advocate division of the department of justice directly chargeable to the public utility under section 475A.6, and shall render a bill to the public utility, either at the conclusion of the investigation, appraisal, services, or review, or from time to time during its progress, which bill is notice of the assessment and shall demand payment. The total amount of such expense in any one calendar year, for which any public utility shall become liable, shall not exceed two-tenths of one percent of its gross operating revenues derived from intrastate public utility operations in the last preceding calendar year.

The board shall ascertain the total of the division's expenditures during each year which are reasonably attributable to the performance of its duties under this chapter. The board shall add to this total the certified expenses of the consumer advocate as provided under section 475A.6 and shall deduct all amounts chargeable directly to any specific utility under any law. The remainder shall be assessed by the board to the public utilities in proportion to their respective gross operating revenues during the last calendar year derived from intrastate public utility operations and may be assessed by the board on a quarterly basis. Assessments may be made quarterly based upon estimates of the utilities division's and the consumer advocate's expenditures for the fiscal year. Beginning with the fiscal year beginning July 1, 1987, the first assessment for any fiscal year may be made by the utilities division by May 15 of the preceding fiscal year and shall be paid by the utility on or before the following July 1. Not more than ninety days following the close of the fiscal year, the utilities division shall conform the amount of the prior fiscal year's assessments to the requirements of this section. Public utilities exempt from rate regulation under this chapter shall not be assessed for remainder expenses incurred during review of rate-

regulated public utilities under section 476.31 or 476.32, but such remainder expenses shall be assessed proportionally as provided in this section among only the rate-regulated public utilities. The total amount which may be assessed to the public utilities under authority of this paragraph shall not exceed two-tenths of one percent of the total gross operating revenues of the public utilities during the calendar year derived from intrastate public utility operations. However, the total amount which may be assessed in any one calendar year to a public utility under this section shall not exceed three-tenths of one percent of the utility's total gross operating revenues derived from intrastate public utility operation in the last preceding year. For public utilities exempted from rate regulation under this chapter, the assessments under this paragraph shall be computed at one-half the rate used in computing the assessment for other utilities.

Each utility shall pay the division the amount assessed against it within thirty days from the time the division mails notice to it of the amount due unless it shall file with the board objections in writing setting out the grounds upon which it claims that such assessment is excessive, erroneous, unlawful, or invalid. Upon the filing of such objections the board shall set the matter down for hearing and issue its order in accordance with its findings in such proceeding, which order shall be subject to review in the manner provided in this chapter. All amounts collected by the division pursuant to the provisions of this section shall be deposited with the state treasurer and credited to the general fund of the state. Such amounts shall be spent in accordance with the provisions of chapter 8.

Whenever the board shall deem it necessary in order to carry out the duties imposed upon it in connection with rate regulation under section 476.6, investigations under section 476.3, or review proceedings under section 476.31, the board may employ additional temporary or permanent staff, or may contract with persons who are not state employees for engineering, accounting, or other professional services, or both. The costs of these additional employees and contract services shall be paid by the public utility whose rates are being reviewed in the same manner as other expenses are paid under this section. Beginning on July 1, 1991, there is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary to enable the board to hire additional staff and contract for services under this section. The board shall increase quarterly assessments specified in unnumbered paragraph 2, by amounts necessary to enable the board to hire additional staff and contract for services under this section. The authority to hire additional temporary or permanent staff that is granted to the board by this section shall not be subject to limitation by any administrative or executive order or decision that restricts the number of state employees or the filling of employee vacancies, and shall not be subject to limitation by any law of

this state that restricts the number of state employees or the filling of employee vacancies unless that law is made applicable to this section by express reference to this section. Before the board expends or encumbers an amount in excess of the funds budgeted for rate regulation and before the board increases quarterly assessments pursuant to this paragraph, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the expenses exceed the funds budgeted by the general assembly to the board for rate regulation and that the board does not have other funds from which the expenses can be paid. Upon approval of the director of the department of management the board may expend and encumber funds for the excess expenses, and increase quarterly assessments to raise the additional funds. The board and the office of consumer advocate may add additional personnel or contract for additional assistance to review and evaluate energy efficiency plans and the implementation of energy efficiency programs including, but not limited to, professionally trained engineers, accountants, attorneys, skilled examiners and inspectors, and secretaries and clerks. The board and the office of consumer advocate may also contract for additional assistance in the evaluation and implementation of issues relating to telecommunication competition. The board and the office of the consumer advocate may expend additional sums beyond those sums appropriated. However, the authority to add additional personnel or contract for additional assistance must first be approved by the department of management. The additional sums for energy efficiency shall be provided to the board and the office of the consumer advocate by the utilities subject to the energy efficiency requirements in this chapter. Telephone companies shall pay any additional sums needed for assistance with telecommunication competition issues. The assessments shall be in addition to and separate from the quarterly assessment.

Fees paid to the utilities division shall be deposited in the general fund of the state. These funds shall be used for the payment, upon appropriation by the general assembly, of the expenses of the utilities division and the consumer advocate division of the department of justice. Subject to this section, the utilities division or the consumer advocate division may keep on hand with the treasurer of state funds in excess of the current needs of the utilities division or the consumer advocate division.

The administrator and consumer advocate shall account for receipts and disbursements according to the separate duties imposed upon the utilities and consumer advocate divisions by the laws of this state and each separate duty shall be fiscally self-sustaining.

All fees and other moneys collected under this section and sections 478.4, 479.16, and 479A.9 shall be deposited into the general fund of the state and expenses required to be paid under this section shall

be paid from funds appropriated for those purposes. Moneys deposited into the general fund of the state pursuant to this section and sections 478.4, 479.16, and 479A.9 shall be subject to the requirements of section 8.60.

95 Acts, ch 199, §3
Unnumbered paragraph 4 amended

476.11 Telephone toll connections.

Whenever toll connection between the lines or facilities of two or more telephone companies has been made, or is demanded under the statutes of this state and the companies concerned cannot agree as to the terms and procedures under which toll communications shall be interchanged, the board upon complaint in writing, after hearing had upon reasonable notice, shall determine such terms and procedures.

The board may resolve complaints, upon notice and hearing, that a utility, operating under section 476.29, has failed to provide just, reasonable, and nondiscriminatory arrangements for interconnection of its telecommunications services with another telecommunications provider.

95 Acts, ch 199, §4
NEW unnumbered paragraph 2

476.29 Certificates for providing local telecommunications services.

1. After September 30, 1992, a utility must have a certificate of public convenience and necessity issued by the board before furnishing land-line local telephone service in this state. No lines or equipment shall be constructed, installed, or operated for the purpose of furnishing the service before a certificate has been issued.

2. Except as provided in subsection 12, a certificate shall be issued by the board, after notice and opportunity for hearing, if the board determines that the service proposed to be rendered will promote the public convenience and necessity, provided that an applicant other than a local exchange carrier, as defined in section 476.96, shall not be denied a certificate if the board finds that the applicant possesses the technical, financial, and managerial ability to provide the service it proposes to render and the board finds the service is consistent with the public interest. The board shall make a determination within ninety days of the submission by the applicant of evidence of its technical, financial, and managerial ability, unless the board determines that additional time is necessary to consider the application, in which case the board may extend the time for making a determination for an additional sixty days. The board may establish reasonable conditions or restrictions on the certificate at the time of issuance.

3. A certificate is transferable, subject to approval of the board pursuant to section 476.20, subsection 1, and for purposes of a rate-regulated local exchange utility shall be treated by the board in the same manner as a reorganization pursuant to sections 476.76 and 476.77.

4. Each certificate shall define the service territory in which land-line local telephone service will be provided. The service territory shall be shown on maps and other documentation as the board may require to be filed with the board. The board shall, by rule, specify the style, size, and kind of map or other documentation, and the information to be shown.

5. Each local exchange utility has an obligation to serve all eligible customers within the utility's service territory, unless explicitly excepted from this requirement by the board.

6. The certificate and tariffs approved by the board are the only authority required for the utility to furnish land-line local telephone service. However, to the extent not inconsistent with this section, the power to regulate the conditions required and manner of use of the highways, streets, rights-of-way, and public grounds remains in the appropriate public authority.

7. The inclusion of any facilities or service territory of a local exchange utility within the boundaries of a city does not impair or affect the rights of the utility to provide land-line local telephone service in the utility's service territory.

8. An agreement between local exchange utilities to designate service territory boundaries and customers to be served by the utilities, or for exchange of customers between utilities, when approved by the board after notice to affected persons and opportunity for hearing, is valid and enforceable and shall be incorporated into the appropriate certificates. The board shall approve an agreement if the board finds the agreement will result in adequate service to all areas and customers affected and is in the public interest.

9. A certificate may, after notice and opportunity for hearing, be revoked by the board for failure of a utility to furnish reasonably adequate telephone service and facilities. The board may also order a revocation affecting less than the entire service territory, or may place appropriate conditions on a utility to ensure reasonably adequate telephone service. Prior to revocation proceedings, the board shall notify the utility of any inadequacies in its service and facilities and allow the utility a reasonable time to eliminate the inadequacies.

10. In the event that eighty percent or more of the subscribers in a community served by a local exchange utility sign a petition indicating they are adversely affected by school reorganization or economic dislocation and prefer to have their local telephone service provided by a different local exchange utility and file that petition with the board, the board, after notice and opportunity for hearing, shall determine whether the certificate held by the local exchange utility shall be revoked or conditioned as provided in subsection 9.

11. The board shall assure that all territory in the state is served by a local exchange utility. If at any time due to certificate revocation proceedings, discontinuance of service proceedings, or any other reason, it appears that a particular territory may not be

served by any local exchange utility, the board may, after notice to interested persons and opportunity for hearing, include all or part of the territory in the certificate of another local exchange utility or utilities. In determining the local exchange utility or utilities to be authorized or required to serve, the board shall consider the willingness and ability of the utilities to serve, the location of existing service facilities, the community of interest of the customers involved, and any other factors deemed relevant to the public interest.

12. The board, on or prior to September 30, 1992, shall issue to each local exchange utility in the state, without a contested case proceeding, a nonexclusive certificate to serve the area included within the utility's service territory boundaries as shown by the service territory boundary maps on record with the board on January 1, 1992. The board shall adopt rules pursuant to chapter 17A to implement the issuance of certificates.

a. A customer served by a local exchange utility, but outside the service territory of that utility when the utility's certificate is issued, shall continue to be served by that utility for as long as that customer remains eligible to receive and requests service.

b. If more than one utility has on file maps indicating service in the same territory, the board shall request the involved utilities to resolve the overlap. If the overlap is not resolved in a reasonable time, the board, after notice to interested persons and opportunity for hearing, shall determine the boundary, taking into consideration the criteria listed in subsection 11.

13. Reserved.

14. This section does not prevent the board from adopting rules requiring or allowing local exchange utilities to provide extended area service or adjacent exchange service.

15. The board shall provide a written report to the general assembly no later than January 20, 2005, describing the current status of local telephone service in this state. The report shall include at a minimum the number of certificates of convenience issued, the number of current providers of local telephone service, and any other information deemed appropriate by the board.

92 Acts, ch 1058, §2; 95 Acts, ch 199, §5
 Subsection 2 amended
 Subsection 13 stricken effective July 1, 1995, as provided in 92 Acts, ch 1058, §2

476.92 through 476.94 Reserved.

PRICE REGULATION FOR TELECOMMUNICATIONS SERVICES PROVIDERS

476.95 Findings — statement of policy.

The general assembly finds all of the following:
 1. Communications services should be available throughout the state at just, reasonable, and affordable rates from a variety of providers.
 2. In rendering decisions with respect to regulation of telecommunications companies, the board

shall consider the effects of its decisions on competition in telecommunications markets and, to the extent reasonable and lawful, shall act to further the development of competition in those markets.

3. In order to encourage competition for all telecommunications services, the board should address issues relating to the movement of prices toward cost and the removal of subsidies in the existing price structure of the incumbent local exchange carrier.

4. Regulatory flexibility is appropriate when competition provides customers with competitive choices in the variety, quality, and pricing of communications services, and when consistent with consumer protection and other relevant public interests.

5. The board should respond with speed and flexibility to changes in the communications industry.

6. Economic development can be fostered by the existence of advanced communications networks.

95 Acts, ch 199, §6
NEW section

476.96 Definitions.

As used in section 476.95, this section, and sections 476.97 through 476.102, unless the context otherwise requires:

1. "*Basic communications service*" includes at a minimum, basic local telephone service, switched access, 911 and E-911 services, and dual party relay service. The board is authorized to classify by rule at any time, any other two-way switched communications services as basic communications services consistent with community expectations and the public interest.

2. "*Basic local telephone service*" means the provision of dial tone access and usage, for the transmission of two-way switched communications within a local exchange area, including, but not limited to, the following:

a. Residence service and business services, including flat rate or local measured service, private branch exchange trunks, trunk type hunting services, direct inward dialing, and the network access portion of central office switched exchange service.

b. Extended area service.

c. Touch tone service when provided separately.

d. Call tracing.

e. Calling number blocking on either a per call or a per line basis.

f. Local exchange white pages directories.

g. Installation and repair of local network access.

h. Local operator services, excluding directory assistance.

i. Toll service blocking and 1-900 and 1-976 access blocking.

3. "*Competitive local exchange service provider*" means any person that provides local exchange services, other than a local exchange carrier or a nonrate-regulated wireline provider of local exchange services under an authorized certificate of public convenience and necessity within a specific geographic area described in maps filed with and approved by the board as of September 30, 1992.

4. "*Interim number portability*" means one or more mechanisms by which a local exchange customer at a particular location may change the customer's local exchange services provider without any change in the local exchange customer's telephone number, while experiencing as little loss of functionality as is feasible using available technology.

5. "*Local exchange carrier*" means any person that was the incumbent and historical rate-regulated wireline provider of local exchange services or any successor to such person that provides local exchange services under an authorized certificate of public convenience and necessity within a specific geographic area described in maps filed with and approved by the board as of September 30, 1992.

6. "*Nonbasic communications services*" means all communications services subject to the board's jurisdiction which are not deemed either by statute or by rule to be basic communications services, including any service offered by the local exchange carrier for the first time after July 1, 1995. A service is not considered new if it constitutes the bundling, unbundling, or repricing of an already existing service. Consistent with community expectations and the public interest, the board may reclassify by rule as nonbasic those two-way switched communications services previously classified by rule as basic.

7. "*Provider number portability*" means the capability of a local exchange customer to change the customer's local exchange services provider at the customer's same location without any change in the local exchange customer's telephone number, while preserving the full range of functionality that the customer currently experiences. "*Provider number portability*" includes the equal availability of information concerning the local exchange provider serving the number to all carriers, and the ability to deliver traffic directly to that provider without having first to route traffic to the local exchange carrier or otherwise use the services, facilities, or capabilities of the local exchange carrier to complete the call, and without the dialing of additional digits or access codes.

95 Acts, ch 199, §7
NEW section

476.97 Price regulation.

1. Notwithstanding contrary provisions of this chapter relating to rate regulation, the board may approve a plan for price regulation submitted by a rate-regulated local exchange carrier. The plan for price regulation is not effective until the approval by the board of tariffs implementing the unbundling of essential facilities pursuant to section 476.101, subsection 4, except for a local exchange carrier with less than seventy-five thousand access lines whose plan for price regulation will be effective concurrent with the approval of its plan. The board may approve a plan for price regulation prior to the adoption of rules related to the unbundling of essential facilities or concurrent with a rate proceeding under section 476.3, 476.6, or 476.7. During the term of the plan,

the board shall regulate the prices of the local exchange carrier's basic and nonbasic communications services pursuant to the requirements of the price regulation plan approved by the board. The local exchange carrier shall not be subject to rate of return regulation during the term of the plan.

2. The board, after notice and opportunity for hearing, may approve, modify, or reject the plan. The local exchange carrier shall have ten days to accept or reject any board modifications to its plan. If the local exchange carrier rejects a modification to its plan, the board shall reject the plan without prejudice to the local exchange carrier to submit another plan.

3. A price regulation plan, at a minimum, shall include provisions, consistent with the provisions of this section and any rules adopted by the board, for the following:

a. (1) Establishing and changing prices, terms, and conditions for basic communications services. The initial plan for price regulation must include a proposal, which the board shall approve, for reducing the local exchange carrier's average intrastate access service rates to the local exchange carrier's average interstate access service rates in effect as of the last day of the calendar year immediately preceding the date of filing of the plan, as follows:

(a) A local exchange carrier with five hundred thousand or more access lines in this state shall reduce its average intrastate access service rates by at least fifty percent of the difference between average intrastate access service rates and average interstate access service rates as of the date that the plan is filed and further reduce such rates to the average interstate access service rates within ninety days of the date that the plan becomes effective.

(b) A local exchange carrier with fewer than five hundred thousand but seventy-five thousand or more access lines in this state shall reduce its average intrastate access service rates to its average interstate access service rates in increments of at least twenty-five percent, with the initial reduction to take effect on approval of the plan and equal annual reductions on each anniversary of the approval during the first three years that its plan is in effect.

(c) A local exchange carrier with fewer than seventy-five thousand access lines in this state shall reduce its average intrastate access service rates to its average interstate access service rates with equal annual reductions during a period beginning no more than two years and ending no more than five years from the plan's inception.

(2) This section shall not be construed to do either of the following:

(a) Prohibit an additional decrease in a carrier's average intrastate access service rate during the term of the plan.

(b) Permit any increase in a carrier's average intrastate access service rates during the term of the plan.

(3) The plan shall also provide that the initial prices for basic communications services shall be six

percent less than the rates approved and in effect at the time the local exchange carrier files its plan. A local exchange carrier which elects to reduce its rates by six percent shall not, at a later time, increase its rates for basic communications services as a result of the carrier's compliance with the board's rules relating to unbundling. In lieu of the six percent reduction, and prior to the adoption of rules relating to unbundling pursuant to section 476.101, subsection 4, paragraph "a", subparagraph (1), the local exchange carrier may request and the board may establish a regulated revenue requirement in a rate proceeding under section 476.3 or 476.6 commenced after July 1, 1995. After the determination of the local exchange carrier's regulated revenue requirement pursuant to the rate proceeding, the local exchange carrier shall not immediately implement rates designed to recover that regulated revenue requirement. Following the adoption of rules relating to unbundling pursuant to section 476.101, subsection 4, paragraph "a", subparagraph (1), the local exchange carrier shall commence a tariff proceeding for the approval of tariffs implementing such unbundling. The board has six months to complete this tariff proceeding and determine the local exchange carrier's final unbundled rates. The local exchange carrier shall carry forward the regulated revenue requirement determined by the board pursuant to the rate proceeding and design rates that comply with the board's rules relating to unbundling that recover the regulated revenue requirement, and that implement the board's approved rate design established in the tariff proceeding.

In lieu of taking the six percent reduction, a local exchange carrier that submits a plan for price regulation after the board adopts rules relating to unbundling may file a rate proceeding under section 476.3 or 476.6 and the board may approve rates designed to comply with those rules which allow the carrier to recover the established regulated revenue requirement and that implement the board's approved rate design established in the tariff proceeding.

(4) The plan shall provide for both increases and decreases in the prices for basic communications services reflecting annual changes in inflation and productivity. Prior to January 1, 1998, the board shall use the gross domestic product price index, as published by the federal government, for an inflation measure, and two and six-tenths percentage points for a productivity measure. After January 1, 1998, the board by rule may adopt current measures of inflation and productivity.

(5) The plan may provide that price increases for basic communications services which are permitted under this section may be deferred and accumulated for a maximum of three years into a single price increase, provided that a deferred and accumulated price increase under this section shall not at any time exceed six percent. A price decrease for basic communications services shall not be deferred or accumulated, except that price decreases of less than two percent may be deferred by the local exchange carrier

for one year. A price decrease required under this section may be offset by a price increase for a basic communications service that would have been permitted under this section in the previous twelve-month period, but which was deferred by the local exchange carrier.

b. Establishing and changing prices, terms, and conditions for nonbasic communications services.

c. Reporting new service offerings to the board.

d. Reflecting in rates any changes in revenues, expenses, and investment due to exogenous factors beyond the control of the local exchange carrier.

e. Providing notice to customers, the board, and the consumer advocate of changes in prices, terms, or conditions for basic and nonbasic communications services.

4. The board shall consider the extent to which a proposed plan complies with the requirements of subsection 3 and achieves the following:

a. Just, nondiscriminatory, and reasonable rates.

b. High quality, universally available communications services.

c. Encouragement of investment in communications infrastructure, efficiency improvements, and technological innovation.

d. The introduction of new communications products and services from a variety of sources.

e. Regulatory efficiency including reduction of regulatory costs and delays. A plan shall not provide for waiver of, release from, or delay in implementing the provisions of this section, section 476.101 or 476.102 or any rules adopted by the board pursuant to those sections.

5. Notwithstanding an approved plan for price regulation, the board shall continue to have regulatory authority over the following:

a. The level, extent, and timing of the unbundling of essential facilities offered by a local exchange carrier.

b. Ensuring against cross-subsidization between nonbasic communications services and basic communications services.

6. Any person, including the consumer advocate, a body politic, or the board on its own motion, may file a written complaint pursuant to section 476.3, subsection 1, regarding a local exchange carrier's implementation, operation under, or satisfaction of the purposes of its price regulation plan.

7. The consumer advocate may represent consumers before the board regarding any rule, order, or proceeding pertaining to price regulation. The consumer advocate may act as attorney for and represent consumers generally before any state or federal court concerning a board rule, order, or proceeding pertaining to price regulation.

8. In implementing price regulation, the board shall consider competitively neutral methods to assist lower-income Iowans to secure and retain telephone services.

9. The board shall determine the duration of any plan. The board shall review a local exchange carrier's operation under its plan, with notice and an

opportunity for hearing, within four years of the initiation of the plan and prior to the termination of the plan. The local exchange carrier, consumer advocate, or any person may propose, and the board may approve, any reasonable modifications to a local exchange carrier's plan as a result of the review, except that such modifications shall not require a reduction in the rates for any basic communications service.

10. The board, in determining whether to file a written complaint pursuant to subsection 6 or prior to reviewing a local exchange carrier's operation pursuant to subsection 9, may request that such carrier provide any information which the board deems necessary to make such determination or conduct such review. The carrier shall provide the requested information upon receipt of the request from the board.

11. a. Notwithstanding subsections 1 through 10, a local exchange carrier with fewer than five hundred thousand access lines in this state shall have the option to be regulated pursuant to subsections 1 through 10 or pursuant to this subsection. A local exchange carrier which elects to become price regulated under this subsection shall also be subject to subsections 5 through 8 and subsection 10 in the same manner as a local exchange carrier which operates under an approved plan of price regulation submitted pursuant to subsection 1.

b. A local exchange carrier which elects to become price regulated under this subsection shall give written notice to the board of such election not less than thirty days prior to the date such regulation is to commence.

c. Upon election of a local exchange carrier to become price-regulated under this subsection, the carrier shall reduce its rates for basic local telephone service an average of three percent. In lieu of the three percent reduction, the local exchange carrier may establish its rates for basic local telephone service in a rate proceeding under section 476.3 or 476.6 commenced after July 1, 1995.

d. Initial prices for basic communications services, other than basic local telephone service, shall be set at the rates in effect as of the first of July prior to the date such regulation is to commence.

e. (1) A price-regulated local exchange carrier shall not increase its rates for basic communications services, for a period of twelve months after electing to become price regulated. To the extent necessary, rates for basic services may be increased to carry out the purpose of any rules that may be adopted by the board relating to the terms and conditions of unbundled services and interconnection. A price-regulated local exchange carrier may increase its rates for basic communications services following the initial twelve-month period, to the extent that the change in rate does not exceed two percentage points less than the most recent annual change in the gross domestic product price index, as published by the federal government. If application of such formula achieves a negative result, prices shall be reduced so that the cumulative price change for basic services, including prior price reductions in these services,

achieves the negative result. After January 1, 2000, the board by rule may adopt different measures of inflation and productivity if they are found to be more reflective of the individual price-regulated carriers.

(2) Price increases for basic communications services which are permitted under this subsection may be deferred and accumulated for a maximum of three years into a single price increase, provided that a deferred and accumulated price increase under this subsection shall not at any time exceed six percent. A price decrease for basic communications services shall not be deferred or accumulated, except that price decreases of less than two percent may be deferred by the local exchange carrier for one year. A price decrease required under this section may be offset by a price increase for a basic communications service that would have been permitted under this section in the previous twelve-month period, but which was deferred by the local exchange carrier. A rate change pursuant to this subsection may take effect thirty days after the notification of the board and consumers.

(3) A price-regulated local exchange carrier shall not increase its aggregate revenue weighted prices for nonbasic communications services more than six percent in any twelve-month period.

(4) A price-regulated local exchange carrier may reduce the price for any basic communications service, to an amount not less than the total service long-run incremental cost for such service on one day's notice filed with the board. For purposes of this subsection, "*total service long-run incremental costs*" means the difference between the company's total cost and the total cost of the company less the applicable service, feature, or function.

(5) A price-regulated local exchange carrier may offer new service alternatives for any basic communications services on thirty days prior notice to the board, provided that the preexisting basic communications service rate structure continues to be offered to customers. New telecommunications services shall be considered nonbasic communications services as defined in section 476.96, subsection 6.

(6) A price-regulated local exchange carrier must reduce the average intrastate access service rates to the carrier's average interstate access service rates. Such carrier shall reduce the average intrastate access service rates by at least twenty-five percent of the difference of such rates within ninety days of the election to be price-regulated and twenty-five percent each of the next three years.

f. A local exchange carrier shall notify customers of a rate change under this subsection at least thirty days prior to the effective date of the rate change.

g. A local exchange carrier which elects to become price regulated under this subsection shall also be subject to the following:

(1) The local exchange carrier shall not be subject to rate-of-return regulation while operating under price regulation.

(2) All regulated services shall be provided pursuant to board-approved tariffs.

(3) All new regulated service offerings shall be reported to the board.

(4) Rates may be adjusted by the board to reflect any changes in revenues, expenses, and investment due to exogenous factors beyond the control of the local exchange carrier.

h. The board may review a local exchange carrier's operation under this subsection, with notice and an opportunity for hearing, after four years of the carrier's election to be price-regulated. The local exchange carrier, consumer advocate, or any person may propose, and the board may approve, any reasonable modifications to the price-regulation requirements in this subsection as a result of the specific carrier review, except that such modifications shall not require a reduction in the rates for any basic communications service or a return to rate-base, rate-of-return regulation.

i. This subsection shall not be construed to prohibit an additional decrease or to permit any increase in a local exchange carrier's average intrastate access service rates during the term of the local exchange carrier's operation under price regulation.

95 Acts, ch 199, §8

Report to general assembly by January 15, 1999, concerning implementation of price regulation; 95 Acts, ch 199, §14

NEW section

476.98 Earnings calculation and report.

The consumer advocate shall calculate an estimate of the return of a local exchange carrier operating under price regulation pursuant to section 476.97 as if the carrier were subject to rate-of-return regulation. The calculation shall be based upon the annual report of such carrier and other information provided to the consumer advocate by the carrier. The calculation shall be made every two years beginning following the end of the second calendar year after the year in which the plan becomes effective. The consumer advocate shall provide a written report to the general assembly including the results of this calculation on or before July 1 of the year immediately following the two-year period for which a calculation is made. If, after a review of the information used to make the calculation required in this section, the consumer advocate determines that the public interest would be better served by a different form of rate regulation, the consumer advocate shall provide a recommendation that the general assembly direct the utilities board to implement a different form of rate regulation.

95 Acts, ch 199, §9

NEW section

476.99 Additional price regulation plan provisions.

In addition to the provisions required in section 476.97, a local exchange carrier, prior to operating under price regulation, shall make provision for the following:

1. Reflecting in rates any changes due to changes in the average cost of the local exchange carrier resulting from the sale of an exchange in this state.

2. Encouraging modernization of the local exchange carrier's telecommunications infrastructure. This provision shall include a requirement that the local exchange carrier develop and file with the board an increased modernization plan.

95 Acts, ch 199, §10
NEW section

LOCAL EXCHANGE COMPETITION

476.100 Prohibited acts.

A local exchange carrier shall not do any of the following:

1. Discriminate against another provider of communications services by refusing or delaying access to the local exchange carrier's services.
2. Discriminate against another provider of communications services by refusing or delaying access to essential facilities on terms and conditions no less favorable than those the local exchange carrier provides to itself and its affiliates. A local telecommunications facility, feature, function, or capability of the local exchange carrier's network is an essential facility if all of the following apply:
 - a. Competitors cannot practically or economically duplicate the facility, feature, function, or capability, or obtain the facility, feature, function, or capability from another source.
 - b. The use of the facility, feature, function, or capability by potential competitors is technically and economically feasible.
 - c. Denial of the use of the facility, feature, function, or capability by competitors is unreasonable.
 - d. The facility, feature, function, or capability will enable competition.
3. Degrade the quality of access or service provided to another provider of communications services.
4. Fail to disclose in a timely manner, upon reasonable request and pursuant to a protective agreement concerning proprietary information, all information reasonably necessary for the design of network interface equipment, network interface services, or software that will meet the specifications of the local exchange carrier's local exchange network.
5. Unreasonably refuse or delay interconnections or provide inferior interconnections to another provider.
6. Use basic exchange service rates, directly or indirectly, to subsidize or offset the costs of other products or services offered by the local exchange carrier.
7. Discriminate in favor of itself or an affiliate in the provision and pricing of, or extension of credit for, any telephone service.

95 Acts, ch 199, §11
NEW section

476.101 Local exchange competition.

1. A certificate of public convenience and necessity to provide local telephone service shall not be interpreted as conveying a monopoly, exclusive privilege, or franchise. A competitive local exchange ser-

vice provider shall not be subject to the requirements of this chapter, except that a competitive local exchange service provider shall obtain a certificate of public convenience and necessity pursuant to section 476.29, file tariffs, notify affected customers prior to any rate increase, file reports, information, and pay assessments pursuant to section 476.2, subsection 4, and sections 476.9, 476.10, 476.16, 476.102, and 477C.7, and shall be subject to the board's authority with respect to adequacy of service, interconnection, discontinuation of service, civil penalties, and complaints. If, after notice and opportunity for hearing, the board determines that a competitive local exchange service provider possesses market power in its local exchange market or markets, the board may apply such other provisions of chapter 476 to a competitive local exchange service provider as it deems appropriate.

2. The duty of a local exchange carrier includes the duty, in accordance with requirements prescribed by the board pursuant to subsection 3 and other laws, to provide equal access to, and interconnection with, its facilities so that its network is fully interoperable with the telecommunications services and information services of other providers, and to offer unbundled essential facilities.

3. A local exchange carrier shall provide reasonable access to ducts, conduits, rights-of-way, and other pathways owned or controlled by the local exchange carrier to which reasonable access is necessary to a competitive local exchange service provider in order for a competitive local exchange service provider to provide service and is feasible for the local exchange carrier.

Upon application of a local exchange carrier or a competitive local exchange service provider, the board shall determine any matters concerning reasonable access to ducts, conduits, rights-of-way, and other pathways owned or controlled by the local exchange carrier upon which agreement cannot be reached, including but not limited to, matters regarding valuation, space, and capacity restraints, and compensation for access.

4. a. Prior to September 1, 1995, the board shall initiate a rulemaking proceeding to adopt rules that satisfy the requirements enumerated in subparagraphs (1) through (4). The rulemaking proceeding shall be completed as promptly as possible. The board, upon petition or on its own motion, may conduct a separate evidentiary hearing on the same or related subjects. The evidence from a hearing may be considered by the board during the rulemaking proceeding, provided that the board announces its intention to do so prior to the oral presentation in the rulemaking proceeding. The rules shall do the following:

- (1) Require a local exchange carrier to provide unbundled essential facilities of its network, and allow reasonable and nondiscriminatory equal access to, use of, and interconnection with, those unbundled essential facilities on reasonable, cost-based, and tariffed terms and conditions. The board's rules must

require a local exchange carrier, including those operating under a plan of price regulation, to file tariffs implementing the unbundled essential facilities within ninety days of the board's final order adopting such rules, except for local exchange carriers with less than seventy-five thousand access lines which must file such tariffs within two years of July 1, 1995. Such access, use, and interconnection shall be on terms and conditions no less favorable than those the local exchange carrier provides to itself and its affiliates for the provision of local exchange, access, and toll services. This subsection shall not be construed to establish a presumption as to the level of interconnection charges, if any, to be determined by the board pursuant to subparagraph (2).

(2) Establish reciprocal cost-based compensation for termination of telecommunications services between local exchange carriers and competitive local exchange service providers.

(3) Require local exchange carriers to make interim number portability available on request of a competitive local exchange service provider, and to implement provider number portability as soon as the availability of necessary technology makes provider number portability economically and technically feasible, as determined by the board. The rules shall also devise a reasonable and nondiscriminatory mechanism for the recovery of all recurring and nonrecurring costs of interim and provider number portability.

(4) Develop the cost methodology appropriate for a competitive telecommunications environment.

b. The rules adopted in paragraph "a", subparagraphs (2) and (3), do not apply to local exchange carriers with less than seventy-five thousand access lines until a competitive local exchange service provider has filed for a certificate to provide basic communications services in an exchange or exchanges of the local exchange carrier, or the board determines that competitive necessity requires the implementation of the rules in paragraph "a", subparagraphs (2) and (3), by the local exchange carrier.

5. Local exchange carriers shall file tariffs or price lists in accordance with board rules with respect to the services, features, functions, and capabilities offered to comply with board rules on unbundling of essential facilities and interconnection. Local exchange carriers shall submit with the tariffs or price lists for basic communications services and toll services supporting information that is sufficient for the board to determine the relationship between the proposed charges and the costs of providing such services, features, functions, or capabilities, including the imputed cost of intrastate access service rates in toll service rates pursuant to existing board orders. The board shall review the tariffs or price lists to ensure that the charges are cost-based and that the terms and conditions contained in the tariffs or price lists unbundle any essential facilities in accordance with the board's rules and any other applicable laws.

6. This section shall not be construed to prohibit the board from enforcing rules or orders entered in contested cases pending on July 1, 1995, to the extent that such rules and orders are consistent with the provisions of this section.

7. Except as provided under section 476.29, subsection 2, and this section, the board shall not impose or allow a local exchange carrier to impose restrictions on the resale of local exchange services, functions, or capabilities. The board may prohibit residential service from being resold as a different class of service.

8. Any person may file a written complaint with the board requesting the board to determine compliance by a local exchange carrier with the provisions of sections 476.96 through 476.100, 476.102, and this section, or any board rules implementing those sections. Upon the filing of such complaint, the board may promptly initiate a formal complaint proceeding and give notice of the proceeding and the opportunity for hearing. The formal complaint proceeding may be initiated at any time by the board on its own motion. The board shall render a decision in the proceeding within ninety days after the date the written complaint was filed.

95 Acts, ch 199, §12
NEW section

UNIVERSAL SERVICE

476.102 Universal service.

1. The board shall initiate a proceeding to preserve universal service such that it shall be maintained in a competitively neutral fashion. As a part of this proceeding, the board shall determine the difference between the cost of providing universal service and the prices determined to be appropriate for such service.

2. The board shall base policies for the preservation of universal service on the following principles:

a. A plan adopted by the board should ensure the continued viability of universal service by maintaining quality services at just and reasonable rates.

b. The plan should define the nature and extent of the service encompassed within any entities' universal service obligations.

c. The plan should establish specific and predictable mechanisms to provide competitively neutral support for universal service. Those mechanisms shall include a nondiscriminatory mechanism by which funds to support universal service shall be collected, and a mechanism for disbursement of support funds to eligible subscribers, either directly to those subscribers, or to the subscriber's provider of local exchange services chosen by the subscriber.

d. The plan should be based on other principles as the board determines are necessary and appropriate for the protection of the public interest, convenience, and necessity and consistent with the purposes of sections 476.95 through 476.101 and this section.

95 Acts, ch 199, §13
NEW section

CHAPTER 479

PIPELINES AND UNDERGROUND GAS STORAGE

479.1 Purpose — applicability.

It is the purpose of the general assembly in enacting this law to confer upon the utilities board the power and authority to supervise the transportation or transmission of any solid, liquid, or gaseous substance, except water, within or through this state by pipeline, whether specifically mentioned in this chapter or not, and the power and authority to supervise the underground storage of gas, to protect the safety and welfare of the public in its use of public or private highways, grounds, waters, and streams of any kind in this state. However, this chapter does not apply to interstate natural gas or hazardous liquid pipelines, pipeline companies, and underground storage, as these terms are defined in chapters 479A and 479B.

95 Acts, ch 192, §5
Section amended

479.2 Definitions.

As used in this chapter:

1. *“Board”* means the utilities board within the utilities division of the department of commerce.

2. *“Pipeline”* means a pipe, pipes, or pipelines used for the transportation or transmission of a solid, liquid, or gaseous substance, except water, within or through this state. However, the term does not include interstate pipe, pipes, or pipelines used for the transportation or transmission of natural gas or hazardous liquids.

3. *“Pipeline company”* means a person engaged in or organized for the purpose of owning, operating, or controlling pipelines for the transportation or transmission of any solid, liquid, or gaseous substance, except water, within or through this state. However, the term does not include a person owning, operating, or controlling interstate pipelines for the transportation or transmission of natural gas or hazardous liquids.

4. *“Underground storage”* means storage of gas in a subsurface stratum or formation of the earth.

95 Acts, ch 192, §6
Section amended

479.5 Application for permit.

A pipeline company doing business in this state shall file with the board its verified petition asking for a permit to construct, maintain and operate its pipeline or lines along, over or across the public or private highways, grounds, waters and streams of any kind of this state. Any pipeline company now owning or operating a pipeline in this state shall be issued a permit by the board upon supplying the information as provided for in section 479.6.

A pipeline company doing business in this state and proposing to engage in underground storage of gas within this state shall file with the board its verified petition asking for a permit to construct,

maintain and operate facilities for the underground storage of gas to include the construction, placement, maintenance and operation of machinery, appliances, fixtures, wells, pipelines, and stations necessary for the construction, maintenance and operation of the gas underground storage facilities.

A pipeline company shall hold informational meetings in each county in which real property or property rights will be affected at least thirty days prior to filing the petition for a new pipeline. A member of the board or a person designated by the board shall serve as the presiding officer at each meeting and present an agenda for the meeting which shall include a summary of the legal rights of the affected landowners. No formal record of the meeting shall be required.

The meeting shall be held at a location reasonably accessible to all persons, companies, or corporations which may be affected by the granting of the permit.

The pipeline company seeking the permit for a new pipeline shall give notice of the informational meeting to each person determined to be a landowner affected by the proposed project and each person in possession of or residing on the property. For the purposes of the informational meeting, *“landowner”* means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property and *“pipeline”* means a line transporting a solid, liquid, or gaseous substance, except water, under pressure in excess of one hundred fifty pounds per square inch and extending a distance of not less than five miles or having a future anticipated extension of an overall distance of five miles.

The notice shall set forth the name of the applicant; the applicant's principal place of business; the general description and purpose of the proposed project; the general nature of the right-of-way desired; a map showing the route of the proposed project; that the landowner has a right to be present at such meeting and to file objections with the board; and a designation of the time and place of the meeting; and shall be served by certified mail with return requested not less than thirty days previous to the time set for the meeting; and shall be published once in a newspaper of general circulation in the county. The publication shall be considered notice to landowners whose residence is not known and to each person in possession of or residing on the property provided a good faith effort to notify can be demonstrated by the pipeline company.

A pipeline company seeking rights under this chapter shall not negotiate or purchase any easements or other interests in land in any county known to be affected by the proposed project prior to the informational meeting.

95 Acts, ch 192, §7
Section amended

479.23 Extension of permit.

A pipeline company may petition the board for the extension of a permit granted under this chapter by filing a petition containing the information required by section 479.6, subsections 1 through 4, 6, and 7, and section 479.26.

95 Acts, ch 192, §8
Section amended

479.24 Eminent domain.

A pipeline company granted a pipeline permit under this chapter shall be vested with the right of eminent domain* to the extent necessary and as prescribed and approved by the board, not exceeding seventy-five feet in width for right-of-way and not exceeding one acre in any one location in addition to right-of-way for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline. The board may grant additional eminent domain rights where the pipeline company has presented sufficient evidence to adequately demonstrate that a greater area is required for the proper construction, operation, and maintenance of the pipeline or for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline.

A pipeline company having secured a permit for underground storage of gas shall be vested with the right of eminent domain to the extent necessary and as prescribed and approved by the board in order to appropriate for its use for the underground storage of gas any subsurface stratum or formation in any land which the board shall have found to be suitable and in the public interest for the underground storage of gas, and may appropriate other interests in property, as may be required to adequately examine, prepare, maintain, and operate the underground gas storage facilities. This chapter does not authorize the construction of a pipeline longitudinally on, over or under any railroad right-of-way or public highway, or at other than an approximate right angle to a railroad track or public highway without the consent of the railroad company, the state department of transportation, or the county board of supervisors, and this chapter does not authorize or give the right of condemnation or eminent domain for such purposes.

95 Acts, ch 192, §9
*See 253 Iowa 1143
Section amended

479.25 Damages.

A pipeline company operating a pipeline or a gas storage area shall have reasonable access to the pipeline or gas storage area for the purpose of constructing, operating, maintaining, or locating pipes, pumps, pressure apparatus or other stations, wells, devices, or equipment used in or upon the pipeline or gas storage area; shall pay the owner of the land for the right of entry and the owner of crops for all damages caused by entering, using, or occupying the land; and shall pay to the owner all damages caused by the completion of construction of the pipeline due

to wash or erosion of the soil at or along the location of the pipeline and due to the settling of the soil along and above the pipeline. However, this section shall not prevent the execution of an agreement between the pipeline company and the owner of land or crops with reference to the use of the land.

95 Acts, ch 192, §10
Section amended

479.27 Venue.

In all cases arising under this chapter, the district court of any county in which property of a pipeline company is located shall have jurisdiction.

95 Acts, ch 192, §11
Section amended

479.29 Construction standards.

1. The board shall, pursuant to chapter 17A, adopt rules establishing standards for the protection of underground improvements during the construction of pipelines, to protect soil conservation and drainage structures from being permanently damaged by pipeline construction and for the restoration of agricultural lands after pipeline construction. To ensure that all interested persons are informed of this rulemaking procedure and are afforded a right to participate, the board shall schedule an opportunity for oral presentations on the proposed rule making, and, in addition to the requirements of section 17A.4, shall distribute copies of the notice of intended action and opportunity for oral presentations to each county board of supervisors. Any county board of supervisors may, under the provisions of chapter 17A, and subsequent to the rulemaking proceedings, petition under those provisions for additional rule making to establish standards to protect soil conservation practices, structures and drainage structures within that county. Upon the request of the petitioning county the board shall schedule a hearing to consider the merits of the petition. Rules adopted under this section shall not apply within the boundaries of a city, unless the land is used for agricultural purposes.

2. The county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county. A professional engineer familiar with the standards adopted under this section and registered under chapter 542B shall be in responsible charge of the inspection. A county board of supervisors may contract for the services of a professional engineer for the purposes of the inspection. The reasonable costs of the inspection shall be borne by the pipeline company.

3. If the inspector determines that there has been a violation of the standards adopted under this section, the inspector shall give oral notice, followed by written notice, to the pipeline company and the contractor operating for the pipeline company and order corrective action to be taken in compliance with the standards. The costs of the corrective action shall be borne by the contractor operating for the pipeline company.

4. As a part of the inspection process, the inspector shall ascertain that the trench excavation has been filled in a manner to provide that the topsoil has been replaced on top and rocks and debris have been removed from the topsoil of the easement area. An existing topsoil layer extending at least one foot in width on either side of the pipeline excavation at a maximum depth of twelve inches shall be removed separately and shall be stockpiled and preserved separately during subsequent construction operations, unless other means for separating the topsoil are provided in the easement. The topsoil shall be replaced so the upper portion of the pipeline excavation and the crowned surface shall contain only the topsoil originally removed.

5. Adequate inspection of underground improvements altered during construction of pipeline shall be conducted at the time of the replacement or repair of the underground improvements. An inspector shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and backfilling. The pipeline company and its contractor shall keep all county inspectors continually informed of the work schedule and any schedule changes.

6. If the pipeline company or its contractor does not comply with the orders of the inspector for compliance with the standards, the county board of supervisors may direct the county attorney to petition the district court for an order requiring corrective action to be taken in compliance with the standards adopted under this section.

7. The pipeline company shall allow landowners and inspectors to view the proposed center line of the pipeline prior to commencing trenching operations to insure that construction takes place in its proper location.

8. An inspector may temporarily halt the construction if the construction is not in compliance with the law or the terms of the agreement with the pipeline company regarding topsoil removal and replacement, drainage structures, soil moisture conditions or the location of construction until the inspector consults with the supervisory personnel of the pipeline company. If the construction is then continued over the inspector's objection and is found to not be in compliance with the law or agreement and is found to cause damage, any civil penalty recovered under section 479.31 as a result of that violation shall be paid to the landowner.

9. The board shall instruct inspectors appointed by the board of supervisors regarding the content of the statutes and rules and the inspector's responsibility to require construction conforming with the standards provided by this chapter.

10. Any underground drain tile damaged, cut or removed shall be temporarily repaired and maintained as necessary to allow for its proper function during construction of the pipeline. If temporary repair is not determined to be necessary, the exposed line will nonetheless be screened or otherwise protected to prevent the entry of any for-

eign material, small animals, etc. into the tile line system.

95 Acts, ch 192, §12
Subsection 1 amended

479.30 Entry for land surveys.

After the informational meeting or after the filing of a petition if no informational meeting is required, a pipeline company may enter upon private land for the purpose of surveying and examining the land to determine the direction or depth of a pipeline by giving ten days' written notice by restricted certified mail to the landowner as defined in section 479.5 and to any person residing on or in possession of the land. The entry for land surveys authorized in this section shall not be deemed a trespass and may be aided by injunction. The pipeline company shall pay the actual damages caused by the entry, survey, and examination.

95 Acts, ch 192, §13
Section amended

479.31 Civil penalty.

A person who violates this chapter or any rule or order issued pursuant to this chapter shall be subject to a civil penalty levied by the board not to exceed ten thousand dollars for each violation. Each day that the violation continues shall constitute a separate offense. However, the maximum civil penalty shall not exceed five hundred thousand dollars for any related series of violations. Civil penalties collected pursuant to this section shall be credited to and are appropriated for the Iowa energy center created in section 266.39C.

Any civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the state to the person charged, or may be recovered in a civil action.

95 Acts, ch 192, §14
Unnumbered paragraph 1 amended

479.33 Authorized federal aid.

The board may enter into agreements with and receive moneys from the United States department of transportation for the inspection of pipelines to determine compliance with applicable standards of pipeline safety, and for enforcement of the applicable standards of pipeline safety as provided by Pub. L. No. 103-272, as codified in 49 U.S.C. § 60101-60125.

95 Acts, ch 49, §13
Section amended

479.41 Arbitration agreements.

If an easement or other written agreement between a landowner and a pipeline company provides

for the determination through arbitration of the amount of monetary damages sustained by a landowner and caused by the construction, maintenance, or repair of a pipeline, and if either party has not appointed its arbitrator or agreed to an arbitrator under the agreement within thirty days after the other party has invoked the arbitration provisions of the agreement by written notice to the other party by restricted certified mail, the landowner or the pipeline company may petition a judicial magistrate in the county where the real property is located for the appointment of an arbitrator to serve in the stead of the arbitrator who would have been appointed or agreed to by the other party. Before filing the petition the landowner or pipeline company shall give notice of the petitioning of the judicial magistrate by restricted certified mail to the other party and file proof of mailing with the petition. If after hearing, the magistrate finds that the landowner or pipeline company has not been diligent in appointing or reasonable in agreeing to an arbitrator, the magistrate shall appoint an impartial arbitrator who shall have all of the powers and duties of an arbitrator appointed or agreed to by the other party under the agreement.

For purposes of this section only, "landowner" means the persons who signed the easement or other written agreement, their heirs, successors, and assigns.

95 Acts, ch 192, §15
Section amended

479.42 Subsequent pipelines.

A pipeline company shall not install a subsequent pipeline upon its existing easement when a damage claim from the installation of its previous pipeline on that easement has not been resolved, unless the damage claim is under litigation, arbitration, or a proceeding pursuant to section 479.46.

With the exception of claims for damage to drain tile and future crop deficiency, for this section to apply, landowners and tenants must submit in writing their claims for damages caused by installation of the pipeline within one year of final cleanup on the real property.

95 Acts, ch 192, §16
Section amended

479.46 Determination of installation damages.

1. The county board of supervisors shall determine when installation of a pipeline has been completed in that county for the purposes of this section. Not less than ninety days after the completion of installation, and if an agreement cannot be made as to damages, a landowner whose land was affected by the installation of the pipeline or a pipeline company may file with the board of supervisors a petition asking that a compensation commission determine the damages arising from the installation of the pipeline.

2. If the board of supervisors by resolution approves the petition, the landowner or pipeline com-

pany shall commence the proceeding by filing an application with the chief judge of the judicial district of the county for the appointment of a compensation commission as provided in section 6B.4.

The application shall contain the following:

a. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

b. A description of the nature of the damage claimed to have occurred and the amount of the damage claimed.

c. The name and address of the pipeline company claimed to have caused the damage or the name and address of the affected landowner.

3. After the commissioners have been appointed, the applicant shall serve notice on the pipeline company or the landowner stating the following:

a. That a compensation commission has been appointed to determine the damages caused by the installation of the pipeline.

b. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

c. The date, time, and place when the commissioners will view the premises and proceed to appraise the damages and that the pipeline company or the landowner may appear before the commissioners.

Sections 6B.10 to 6B.13 apply to this notice. If more than one landowner petitions the county board of supervisors, the application to the chief judge, notice to the pipeline company, and appraisal of damages shall be consolidated into one application, notice, and appraisal. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the landowners by doing so.

4. The commissioners shall view the land at the time provided in the notice and assess the damages sustained by the landowner by reason of the installation of the pipeline and they shall file their report with the sheriff. The appraisal of damages returned by the commissioners is final unless appealed. After the appraisal of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice by ordinary mail to the pipeline company and the landowner of the date the appraisal of damages was made, the amount of the appraisal, and that any interested party may appeal to the district court within thirty days of the date of mailing. The sheriff shall endorse the date of mailing of notice on the original appraisal of damages. At the time of appeal, the appealing party shall give written notice to the adverse party or the party's attorney and the sheriff.

5. Chapter 6B applies to this section to the extent it is applicable and consistent with this section.

6. The pipeline company shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the landowner as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the pipeline company prior

to the determination of damages; if the award does not exceed one hundred ten percent, the landowners shall pay the fees and costs incurred by the pipeline company. The pipeline company shall file with the sheriff an affidavit setting forth the most recent offer made to the landowner. Commissioners shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The pipeline company shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial of the appeal the same or a less amount of damages is awarded than was allowed by the commission from which the appeal was taken.

7. As used in this section, "damages" means compensation for damages to the land, crops, and other personal property caused by the construction activity of installing a pipeline and its attendant structures but does not include compensation for a property interest, and "landowner" includes a farm tenant.

8. The provisions of this section do not apply if the easement provides for any other means of negotiation or arbitration.

95 Acts, ch 192, §17
Subsections 1, 2, and 3 amended

479.47 Subsequent tiling.

All additional costs of new tile construction caused by an existing pipeline shall be paid by the pipeline company. To receive compensation under this section, the landowner or agent of the landowner shall either present an invoice specifying the additional costs caused by the presence of the pipeline which is accompanied by a written verification of the additional costs by the county engineer or soil and water conservation district conservationist or reach an agreement with the pipeline company on the project design and share of the cost to be paid by the pipeline company during the planning of the tiling project.

95 Acts, ch 192, §18
Section amended

CHAPTER 479A

INTERSTATE NATURAL GAS PIPELINES

479A.11 Damages.

A pipeline company operating pipelines or underground storage shall be given reasonable access to the pipelines and storage areas for the purpose of constructing, operating, maintaining, or locating their pipes, pumps, pressure apparatus, or other stations, wells, devices, or equipment used in or upon a pipeline or storage area, but shall pay the owner of the lands for the right of entry and the owner of crops on the land all damages caused by entering, using, or occupying the lands for these purposes; and shall pay to the owner of the lands, after the completion of construction of the pipeline or storage, all damages caused by settling of the soil along and above the pipeline, and wash or erosion of the soil along the pipeline due to the construction of the pipeline. However, this section does not prevent the execution of an agreement with other terms between the pipeline company and the owner of the land or crops with reference to their use.

95 Acts, ch 192, §19
Section amended

479A.13 Jurisdiction.

In all cases arising under this chapter, the district court of any county in which property of a pipeline company is located has jurisdiction of a case involving that company.

95 Acts, ch 192, §20
Section amended

479A.14 Land restoration — standards — inspection.

1. The board shall adopt rules establishing standards to protect underground improvements during

the construction of pipelines, to protect soil conservation and drainage structures from being permanently damaged by pipeline construction, and for the restoration of agricultural lands after pipeline construction. To ensure that all interested persons are informed of this rulemaking procedure and are afforded a right to participate, the board shall schedule an opportunity for oral presentations on the proposed rulemaking and, in addition to the requirements of section 17A.4, shall distribute copies of the notice of intended action and opportunity for oral presentations to each county board of supervisors. A county board of supervisors may, under chapter 17A and subsequent to the rulemaking proceedings, petition for additional rulemaking to establish standards to protect soil conservation practices, structures, and drainage structures within that county. Upon the request of the petitioning county, the board shall schedule a hearing to consider the merits of the petition. Rules adopted under this section do not apply within the boundaries of a city, unless the land is used for agricultural purposes.

2. The county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county. A professional engineer familiar with the standards adopted under this section and registered under chapter 542B shall be placed in charge of the inspection. The reasonable costs of the inspection shall be borne by the pipeline company.

3. If the inspector determines that there has been a violation of the standards adopted under this section, the inspector shall give oral notice, followed by

written notice, to the pipeline company and the contractor operating for the pipeline company, and order corrective action to be taken in compliance with the standards. The costs of the corrective action shall be borne by the contractor operating for the pipeline company.

4. As a part of the inspection process, the inspector shall ascertain that the trench excavation has been filled in a manner to provide that the topsoil has been replaced on top and rocks and debris have been removed from the topsoil of the easement area. An existing topsoil layer extending at least one foot in width on either side of the pipeline excavation at a maximum depth of one foot shall be removed separately and shall be stockpiled and preserved separately during subsequent construction operations, unless other means for separating the topsoil are provided in the easement. The topsoil shall be replaced so the upper portion of the pipeline excavation and the crowned surface contain only the topsoil originally removed.

5. Adequate inspection of underground improvements altered during construction of a pipeline shall be conducted at the time of the replacement or repair of the underground improvements. An inspector shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and back-filling. The pipeline company and its contractor shall keep all county inspectors continually informed of the work schedule and any schedule changes.

6. If the pipeline company or its contractor does not comply with the orders of the inspector for compliance with the standards, the county board of supervisors may direct the county attorney to petition the district court for an order requiring corrective action to be taken in compliance with the standards adopted under this section.

7. The pipeline company shall allow landowners and inspectors to view the proposed center line of the pipeline before commencing trenching operations to ensure that construction takes place in the proper location.

8. An inspector may temporarily halt the construction if the construction is not in compliance with this chapter and the standards adopted under it, or the terms of the agreement with the pipeline company regarding topsoil removal and replacement, drainage structures, soil moisture conditions, or the location of construction, until the inspector consults with the supervisory personnel of the pipeline company. If the construction is continued over the inspector's objection and is found not to be in compliance with this chapter, the standards, or the agreement, and is found to cause damage, a civil penalty recovered under section 479A.16 as a result of that violation shall be paid to the landowner.

9. The board shall instruct inspectors appointed by the county board of supervisors regarding the content of this chapter and the standards and the inspectors' responsibility to require construction conforming with them.

10. An underground drain tile damaged, cut, or removed shall be temporarily repaired and maintained as necessary to allow for its proper function during construction of the pipeline. If temporary repair is determined not to be necessary, the exposed line shall be screened or otherwise protected to prevent the entry of foreign material or small animals into the tile line system.

11. This section does not preclude the application of provisions for protecting or restoring property contained in agreements independently executed by the pipeline company and the landowner if the provisions are not inconsistent with state law or with rules adopted by the board.

95 Acts, ch 192, §21
Subsection 1 amended

479A.15 Entry for land surveys.

A pipeline company may enter upon private land for the purpose of surveying and examining the land to determine direction or depth of a pipeline by giving ten days' written notice by restricted certified mail to the landowner and to any person residing on or in possession of the land. For purposes of this section only, "landowner" means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property. The entry for land surveys authorized in this section is not a trespass and may be aided by injunction. The pipeline company shall pay the actual damages caused by the entry and survey.

95 Acts, ch 192, §22
Section amended

479A.16 Civil penalty.

A person who violates this chapter or a rule or an order issued pursuant to this chapter is subject to a civil penalty levied by the board not to exceed one thousand dollars for each violation. Each day that the violation continues constitutes a separate offense. However, the civil penalty shall not exceed two hundred thousand dollars for any related series of violations. Civil penalties collected pursuant to this section shall be credited to and are appropriated for the Iowa energy center created in section 266.39C.

A civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the state to the person charged, or may be recovered in a civil action.

95 Acts, ch 192, §23
Unnumbered paragraph 1 amended

479A.18 Federal inspection.

The board may enter into agreements with and receive moneys from the United States department of

transportation for the inspection of pipelines to determine compliance with the applicable standards of pipeline safety as provided by Pub. L. No. 103-272, as codified in 49 U.S.C. § 60101-60125.

95 Acts, ch 49, §14
Section amended

479A.20 Arbitration agreements.

Notwithstanding conflicting provisions of chapter 679A, if an easement or other written agreement between a landowner and a pipeline company provides for the determination through arbitration of the amount of monetary damages sustained by a landowner and caused by the construction, maintenance, or repair of a pipeline, and if either party has not appointed its arbitrator or agreed to an arbitrator under the agreement within thirty days after the other party has invoked the arbitration provisions of the agreement by written notice to the other party by restricted certified mail, the landowner or the pipeline company may petition a magistrate in the county where the real property is located for the appointment of an arbitrator to serve in place of the arbitrator who would have been appointed or agreed to by the other party. Before filing the petition the landowner or pipeline company shall give notice of the petitioning of the magistrate by restricted certified mail to the other party and file proof of mailing with the petition. If, after hearing, the magistrate finds that the landowner or pipeline company has not been diligent in appointing or reasonable in agreeing to an arbitrator, the magistrate shall appoint an impartial arbitrator who shall have all of the powers and duties of an arbitrator appointed or agreed to by the other party under the agreement.

For purposes of this section only, "landowner" means the persons who signed the easement or other written agreement, their heirs, successors, and assigns.

95 Acts, ch 192, §24
Section amended

479A.21 Subsequent pipelines.

A pipeline company shall not install a subsequent pipeline upon its existing easement when a damage claim from the installation of its previous pipeline on that easement has not been resolved unless that claim is under litigation or arbitration or is the subject of a proceeding pursuant to section 479A.25.

95 Acts, ch 192, §25
Section amended

479A.25 Determination of installation damages.

1. The county board of supervisors shall determine when installation of a pipeline has been completed in that county for the purposes of this section. Not less than ninety days after the completion of installation, and if an agreement cannot be made as to damages, a landowner whose land was affected by the installation of the pipeline or the pipeline company may file with the board of supervisors a petition asking that a compensation commission determine

the damages arising from the installation of the pipeline.

2. If the board of supervisors by resolution approves the petition, the landowner or pipeline company shall commence the proceeding by filing an application with the chief judge of the judicial district of the county for the appointment of a compensation commission as provided in section 6B.4.

The application shall contain all of the following:

a. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

b. A description of the nature of the damage claimed to have occurred and the amount of the damage claimed.

c. The name and address of the pipeline company claimed to have caused the damage or the name and address of the affected landowner.

3. After the commissioners have been appointed, the applicant shall serve notice on the pipeline company or the landowner stating all of the following:

a. That a compensation commission has been appointed to determine the damages caused by the installation of the pipeline.

b. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

c. The place, date, and time when the commissioners will view the premises and proceed to appraise the damages and that the pipeline company or landowner may appear before the commissioners.

Sections 6B.10 to 6B.13 apply to this notice. If more than one landowner petitions the county board of supervisors, the application to the chief judge, notice to the pipeline company, and appraisal of damages shall be consolidated into one application, notice, and appraisal. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the landowners by doing so.

4. The commissioners shall view the land at the time provided in the notice and assess the damages sustained by the landowner by reason of the installation of the pipeline. The commissioners shall file their report with the sheriff. The appraisal of damages returned by the commissioners is final unless appealed. After the appraisal of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice by ordinary mail to the pipeline company and the landowner of the date the appraisal of damages was made, the amount of the appraisal, and that any interested party may appeal to the district court within thirty days of the date of mailing. The sheriff shall endorse the date of mailing of notice on the original appraisal of damages. At the time of appeal, the appealing party shall give written notice to the adverse party or the party's attorney and the sheriff.

5. Chapter 6B applies to this section to the extent it is applicable and consistent with this section.

6. The pipeline company shall pay all costs of the assessment made by the commissioners and reason-

able attorney fees and costs incurred by the landowner as determined by the commissioners, if the award of the commissioners exceeds one hundred ten percent of the final offer of the pipeline company prior to the determination of damages. If the award does not exceed one hundred ten percent, the landowners shall pay the fees and costs incurred by the pipeline company. The pipeline company shall file with the sheriff an affidavit setting forth the most recent offer made to the landowner. Commissioners shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The pipeline company shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial of the appeal the same or a lesser amount of damages is awarded than was allowed by the commission from which the appeal was taken.

7. As used in this section, "damages" means compensation for damages to the land, crops, and other personal property caused by the construction activity of installing a pipeline and its attendant structures

but does not include compensation for a property interest, and "landowner" includes a tenant.

8. This section does not apply if the easement provides for any other means of negotiation or arbitration.

95 Acts, ch 192, §26
Subsections 1, 2, and 3 amended

479A.26 Subsequent tiling.

Additional costs of new tile construction caused by an existing pipeline shall be paid by the pipeline company. To receive compensation under this section, the landowner or agent of the landowner shall either present an invoice specifying the additional costs caused by the presence of the pipeline which is accompanied by a written verification of the additional costs by the county engineer or soil and water conservation district conservationist or reach an agreement with the pipeline company on the project design and share of the cost to be paid by the pipeline company during the planning of the tiling project.

95 Acts, ch 192, §27
Section amended

CHAPTER 479B

HAZARDOUS LIQUID PIPELINES AND STORAGE FACILITIES

479B.1 Purpose — authority.

It is the purpose of the general assembly in enacting this law to grant the utilities board the authority to implement certain controls over hazardous liquid pipelines to protect landowners and tenants from environmental or economic damages which may result from the construction, operation, or maintenance of a hazardous liquid pipeline or underground storage facility within the state, to approve the location and route of hazardous liquid pipelines, and to grant rights of eminent domain where necessary.

95 Acts, ch 192, §28
NEW section

479B.2 Definitions.

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

1. "Board" means the utilities board within the utilities division of the department of commerce.
2. "Hazardous liquid" means crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.
3. "Pipeline" means an interstate pipe or pipeline and necessary appurtenances used for the transportation or transmission of hazardous liquids.
4. "Pipeline company" means a person engaged in or organized for the purpose of owning, operating, or controlling pipelines for the transportation or transmission of any hazardous liquid or underground storage facilities for the underground storage of any hazardous liquid.

5. "Underground storage" means storage of hazardous liquid in a subsurface stratum or formation of the earth.

6. "Utilities division" means the utilities division of the department of commerce.

95 Acts, ch 192, §29
NEW section

479B.3 Conditions attending operation.

A pipeline company shall not construct, maintain, or operate a pipeline or underground storage facility under, along, over, or across any public or private highways, grounds, waters, or streams of any kind in this state except in accordance with this chapter.

95 Acts, ch 192, §30
NEW section

479B.4 Application for permit — informational meeting — notice.

A pipeline company doing business in this state shall file a verified petition with the board asking for a permit to construct, maintain, and operate a new pipeline along, over, or across the public or private highways, grounds, waters, and streams of any kind in this state. Any pipeline company now owning or operating a pipeline or underground storage facility in this state shall be issued a permit by the board upon supplying the information as provided for in section 479B.5, subsections 1 through 5, and meeting the requirements of section 479B.13.

A pipeline company doing business in this state and proposing to store hazardous liquid underground within this state shall file with the board a verified

petition asking for a permit to construct, maintain, and operate facilities for the underground storage of hazardous liquid which includes the construction, placement, maintenance, and operation of machinery, appliances, fixtures, wells, pipelines, and stations necessary for the construction, maintenance, and operation of the underground storage facilities.

The pipeline company shall hold informational meetings in each county in which real property or property rights will be affected at least thirty days prior to filing the petition for a new pipeline. A member of the board, or a person designated by the board, shall serve as the presiding officer at each meeting and present an agenda for the meeting which shall include a summary of the legal rights of the affected landowners. No formal record of the meeting shall be required. The meeting shall be held at a location reasonably accessible to all persons who may be affected by granting the permit.

The pipeline company seeking the permit for a new pipeline shall give notice of the informational meeting to each landowner affected by the proposed project and each person in possession of or residing on the property. For the purposes of the informational meeting, "landowner" means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property and "pipeline" means a line transporting a hazardous liquid under pressure in excess of one hundred fifty pounds per square inch and extending a distance of not less than five miles or having a future anticipated extension of an overall distance of five miles.

The notice shall set forth the following: the name of the applicant, the applicant's principal place of business, the general description and purpose of the proposed project, the general nature of the right-of-way desired, a map showing the route or location of the proposed project, that the landowner has a right to be present at the meeting and to file objections with the board, and a designation of the time and place of the meeting. The notice shall be sent by restricted certified mail and shall be published once in a newspaper of general circulation in the county not less than thirty days before the date set for the meeting. The publication shall be considered notice to landowners whose residence is not known and to each person in possession of or residing on the property provided a good faith effort to notify can be demonstrated by the pipeline company.

A pipeline company seeking rights under this chapter shall not negotiate or purchase an easement or other interest in land in a county known to be affected by the proposed project prior to the informational meeting.

95 Acts, ch 192, §31
NEW section

479B.5 Petition.

A petition for a permit shall state all of the following:

1. The name of the individual, firm, corporation, company, or association applying for the permit.

2. The applicant's principal office and place of business.

3. A legal description of the route of the proposed pipeline and a map of the route.

4. A general description of the public or private highways, grounds, waters, streams, and private lands of any kind along, over, or across which the proposed pipeline will pass.

5. If permission is sought to construct, maintain, and operate facilities for the underground storage of hazardous liquids the petition shall include the following additional information:

- a. A description and a map of the public or private highways, grounds, waters, streams, and private lands of any kind under which the storage is proposed.

- b. Maps showing the location of proposed machinery, appliances, fixtures, wells, and stations necessary for the construction, maintenance, and operation of the hazardous liquid storage facilities.

6. The possible use of alternative routes.

7. The relationship of the proposed project to the present and future land use and zoning ordinances.

8. The inconvenience or undue injury which may result to property owners as a result of the proposed project.

9. An affidavit attesting to the fact that informational meetings were held in each county affected by the proposed project and the time and place of each meeting.

95 Acts, ch 192, §32
NEW section

479B.6 Hearing — notice.

After the petition is filed, the board shall fix a date for a hearing and shall publish notice for two consecutive weeks, in a newspaper of general circulation in each county through which the proposed pipeline or hazardous liquid storage facilities will extend.

The hearing shall not be less than ten days nor more than thirty days from the date of the last publication of the notice. If the pipeline exceeds five miles in length, the hearing shall be held in the county seat of the county located at the midpoint of the proposed pipeline or the county in which the proposed hazardous liquid storage facility would be located.

95 Acts, ch 192, §33
NEW section

479B.7 Objections.

A person, including a governmental entity, whose rights or interests may be affected by the proposed pipeline or hazardous liquid storage facilities may file written objections.

All objections shall be on file with the board not less than five days before the date of hearing on the application. However, the board may permit the filing of the objections later than five days before the hearing, in which event the applicant must be granted a reasonable time to meet the objections.

95 Acts, ch 192, §34
NEW section

479B.8 Examination — testimony.

The board may examine the proposed route of the pipeline and location of the underground storage facility. At the hearing the board shall consider the petition and any objections and may hear testimony to assist the board in making its determination regarding the application.

95 Acts, ch 192, §35
NEW section

479B.9 Final order — condition.

The board may grant a permit in whole or in part upon terms, conditions, and restrictions as to location and route as it determines to be just and proper. A permit shall not be granted to a pipeline company unless the board determines that the proposed services will promote the public convenience and necessity.

95 Acts, ch 192, §36
NEW section

479B.10 Costs and fees.

The applicant shall pay all costs of the informational meetings, hearing, and necessary preliminary investigation including the cost of publishing notice of hearing, and shall pay the actual unrecovered costs directly attributable to inspections conducted by the board.

95 Acts, ch 192, §37
NEW section

479B.11 Inspection fee.

If the board enters into agreements with the United States department of transportation pursuant to section 479B.23, a pipeline company shall pay an annual fee of fifty cents per mile of pipeline or fraction thereof for each inch of diameter of the pipeline located in the state. The inspection fee shall be paid to the board between January 1 and February 1 for the calendar year.

The board shall collect all fees. Failure to pay any fee within thirty days from the due date shall be grounds for revocation of the permit or assessment of civil penalties.

95 Acts, ch 192, §38
NEW section

479B.12 Use of funds.

All moneys received under this chapter, other than civil penalties collected pursuant to section 479B.21, shall be remitted monthly to the treasurer of state and credited to the general fund of the state.

95 Acts, ch 192, §39
NEW section

479B.13 Financial condition of permittee — bond.

Before a permit is granted under this chapter the applicant must satisfy the board that the applicant has property within this state other than pipelines or underground storage facilities, subject to execution of a value in excess of two hundred fifty thousand dollars, or the applicant must file and maintain with the board a surety bond in the penal sum of two

hundred fifty thousand dollars with surety approved by the board, conditioned that the applicant will pay any and all damages legally recovered against it growing out of the construction, maintenance, or operation of its pipeline or underground storage facilities in this state. When the pipeline company deposits with the board security satisfactory to the board as a guaranty for the payment of the damages, or furnishes to the board satisfactory proofs of its solvency and financial ability to pay the damages, the pipeline company is relieved of the provisions requiring bond.

95 Acts, ch 192, §40
NEW section

479B.14 Permits — limitations — sale or transfer — records — extension.

The board shall prepare and issue permits. The permit shall show the name and address of the pipeline company to which it is issued and identify the decision and order of the board under which the permit is issued. The permit shall be signed by the chairperson of the board and the official seal of the board shall be affixed to it.

The board shall not grant an exclusive right to any pipeline company to construct, maintain, or operate its pipeline along, over, or across any public or private highway, grounds, waters, or streams. The board shall not grant a permit for longer than twenty-five years.

A permit shall not be sold until the sale is approved by the board.

If a transfer of a permit is made before the construction for which it was issued is completed in whole or in part, the transfer shall not be effective until the pipeline company to which it was issued files with the board a notice in writing stating the date of the transfer and the name and address of the transferee.

The board shall keep a record of all permits granted by it, showing when and to whom granted and the location and route of the pipeline or underground storage facility, and if the permit has been transferred, the date and the name and address of the transferee.

A pipeline company may petition the board for an extension of a permit granted under this section by filing a petition containing the information required by section 479B.5, subsections 1 through 5, and meeting the requirements of section 479B.13.

95 Acts, ch 192, §41
NEW section

479B.15 Entry for land surveys.

After the informational meeting or after the filing of a petition if no informational meeting is required, a pipeline company may enter upon private land for the purpose of surveying and examining the land to determine direction or depth of pipelines by giving ten days' written notice by restricted certified mail to the landowner as defined in section 479B.4 and to any person residing on or in possession of the land.

The entry for land surveys shall not be deemed a trespass and may be aided by injunction. The pipeline company shall pay the actual damages caused by the entry, survey, and examination.

95 Acts, ch 192, §42
NEW section

479B.16 Eminent domain.

A pipeline company granted a pipeline permit shall be vested with the right of eminent domain, to the extent necessary and as prescribed and approved by the board, not exceeding seventy-five feet in width for right-of-way and not exceeding one acre in any one location in addition to right-of-way for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline. The board may grant additional eminent domain rights where the pipeline company has presented sufficient evidence to adequately demonstrate that a greater area is required for the proper construction, operation, and maintenance of the pipeline or for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline.

A pipeline company granted a permit for underground storage of hazardous liquid shall be vested with the right of eminent domain to the extent necessary and as prescribed and approved by the board in order to appropriate for its use for the underground storage of hazardous liquid any subsurface stratum or formation in any land which the board shall have found to be suitable and in the public interest for the underground storage of hazardous liquid, and may appropriate other interests in property, as may be required adequately to examine, prepare, maintain, and operate the underground storage facilities.

This chapter does not authorize the construction of a pipeline longitudinally on, over, or under any railroad right-of-way or public highway, or at other than an approximate right angle to a railroad track or public highway without the consent of the railroad company, the state department of transportation, or the county board of supervisors, and this chapter does not authorize or give the right of condemnation or eminent domain for such purposes.

95 Acts, ch 192, §43
NEW section

479B.17 Damages.

A pipeline company operating a pipeline or an underground storage facility shall have reasonable access to the pipeline or underground storage facility for the purpose of constructing, operating, maintaining, or locating pipes, pumps, pressure apparatus, or other stations, wells, devices, or equipment used in or upon the pipeline or underground storage facility. A pipeline company shall pay the owner of the land for the right of entry and the owner of crops for all damages caused by entering, using, or occupying the lands and shall pay to the owner all damages caused by the completion of construction of the pipeline due

to wash or erosion of the soil at or along the location of the pipeline and due to the settling of the soil along and above the pipeline. However, this section does not prevent the execution of an agreement between the pipeline company and the owner of the land or crops with reference to the use of the land.

95 Acts, ch 192, §44
Section is retroactive to July 1, 1993; 95 Acts, ch 192, §62
NEW section

479B.18 Venue.

In all cases arising under this chapter, the district court of any county in which property of a pipeline company is located has jurisdiction of a case involving the pipeline company.

95 Acts, ch 192, §45
NEW section

479B.19 Orders — enforcement.

If the pipeline company fails to obey an order within the period of time determined by the board, the board may commence an equitable action in the district court of the county where the pipeline, device, apparatus, equipment, or underground storage facility is located to compel compliance with its order. If, after trial, the court finds that the order is reasonable, equitable, and just, the court shall decree a mandatory injunction compelling obedience to and compliance with the order and may grant other relief as may be just and proper. Appeal from the decree may be taken in the same manner as in other actions.

95 Acts, ch 192, §46
NEW section

479B.20 Land restoration standards.

1. The board, pursuant to chapter 17A, shall adopt rules establishing standards for the protection of underground improvements during the construction of pipelines or underground storage facilities, to protect soil conservation and drainage structures from being permanently damaged by construction of the pipeline or underground storage facility, and for the restoration of agricultural lands after pipeline or underground storage facility construction. To ensure that all interested persons are informed of this rule-making procedure and are afforded a right to participate, the board shall schedule an opportunity for oral presentations on the proposed rulemaking, and, in addition to the requirements of section 17A.4, shall distribute copies of the notice of intended action and opportunity for oral presentations to each county board of supervisors. Any county board of supervisors may, under the provisions of chapter 17A, and subsequent to the rulemaking proceedings, petition under those provisions for additional rulemaking to establish standards to protect soil conservation practices, structures, and drainage structures within that county. Upon the request of the petitioning county, the board shall schedule a hearing to consider the merits of the petition. Rules adopted under this section shall not apply within the boundaries of a city unless the land is used for agricultural purposes.

2. The county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county. A professional engineer familiar with the standards adopted under this section and registered under chapter 542B shall be responsible for the inspection. A county board of supervisors may contract for the services of a professional engineer for the purposes of the inspection. The reasonable costs of the inspection shall be paid by the pipeline company.

3. If the inspector determines that there has been a violation of the standards adopted under this section, the inspector shall give oral notice, followed by written notice, to the pipeline company and the contractor operating for the pipeline company and order corrective action to be taken in compliance with the standards. The costs of the corrective action shall be borne by the contractor operating for the pipeline company.

4. As a part of the inspection process, the inspector shall ascertain that the trench excavation has been filled in a manner to provide that the topsoil has been replaced on top and rocks and debris have been removed from the topsoil of the easement area. An existing topsoil layer extending at least one foot in width on either side of the pipeline excavation at a maximum depth of twelve inches shall be removed separately and shall be stockpiled and preserved separately during subsequent construction operations, unless other means for separating the topsoil are provided in the easement. The topsoil shall be replaced so the upper portion of the pipeline excavation and the crowned surface shall contain only the topsoil originally removed.

5. Adequate inspection of underground improvements altered during construction of the pipeline shall be conducted at the time of the replacement or repair of the underground improvements. An inspector shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and backfilling. The pipeline company and its contractor shall keep all county inspectors continually informed of the work schedule and any schedule changes.

6. If the pipeline company or its contractor does not comply with the orders of the inspector for compliance with the standards, the county board of supervisors may direct the county attorney to petition the district court for an order requiring corrective action to be taken in compliance with the standards adopted under this section.

7. The pipeline company shall allow landowners and inspectors to view the proposed center line of the pipeline prior to commencing trenching operations to ensure that construction takes place in its proper location.

8. An inspector may temporarily halt the construction if the construction is not in compliance with the law or the terms of the agreement with the pipeline company regarding topsoil removal and re-

placement, drainage structures, soil moisture conditions, or the location of construction until the inspector consults with the supervisory personnel of the pipeline company. If the construction is then continued over the inspector's objection and is found not to be in compliance with the law or agreement and is found to cause damage, any civil penalty recovered under section 479B.21 as a result of that violation shall be paid to the landowner.

9. The board shall instruct inspectors appointed by the board of supervisors regarding the content of the statutes and rules and the inspector's responsibility to require construction conforming with the standards provided by this chapter.

10. Any underground drain tile damaged, cut, or removed shall be temporarily repaired and maintained as necessary to allow for its proper function during construction of the pipeline or underground storage facility. If temporary repair is not determined to be necessary, the exposed tile shall nonetheless be screened or otherwise protected to prevent the entry of any foreign material or small animals into the tile line system.

11. This section does not preclude the application of provisions for protecting or restoring property contained in agreements independently executed by the pipeline company and the landowner if the provisions are not inconsistent with state law or with rules adopted by the board.

95 Acts, ch 192, §47
NEW section

479B.21 Civil penalty.

A person who violates this chapter or any rule or order issued pursuant to this chapter shall be subject to a civil penalty levied by the board in an amount not to exceed one thousand dollars for each violation. Each day that the violation continues shall constitute a separate offense. However, the maximum civil penalty shall not exceed two hundred thousand dollars for any related series of violations. Civil penalties collected pursuant to this section shall be credited to and are appropriated for the use of the Iowa energy center created in section 266.39C.

A civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the pipeline company charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the state to the person charged, or may be recovered in a civil action.

95 Acts, ch 192, §48
NEW section

479B.22 Rehearing — judicial review.

Rehearing procedure for any person aggrieved by actions of the board under this chapter shall be as

provided in section 476.12. Judicial review may be sought in accordance with the terms of chapter 17A.

95 Acts, ch 192, §49
NEW section

479B.23 Authorized federal aid.

The board may enter into agreements with and receive moneys from the United States department of transportation for the inspection of pipelines to determine compliance with applicable standards of pipeline safety, and for enforcement of the applicable standards of pipeline safety as provided by 49 U.S.C. § 60101 et seq.

95 Acts, ch 192, §50
NEW section

479B.24 Cancellation.

A pipeline company seeking to acquire an easement or other property interest for the construction, maintenance, or operation of a pipeline or underground storage facility shall do all of the following:

1. Allow the landowner or a person serving in a fiduciary capacity on the landowner's behalf to cancel an agreement granting an easement or other interest by restricted certified mail to the pipeline company's principal place of business if received by the pipeline company within seven days, excluding Saturday and Sunday, of the date of the agreement and inform the landowner or the fiduciary in writing of the right to cancel prior to the signing of the agreement by the landowner or the fiduciary.

2. Provide the landowner or a person serving in a fiduciary capacity in the landowner's behalf with a form in duplicate for the notice of cancellation.

3. Not record an agreement until after the period for cancellation has expired.

4. Not include in the agreement a waiver of the right to cancel in accordance with this section. The landowner or a person serving in a fiduciary capacity in the landowner's behalf may exercise the right of cancellation only once for each pipeline project.

95 Acts, ch 192, §51
NEW section

479B.25 Arbitration agreements.

If an easement or other written agreement between a landowner and a pipeline company provides for the determination through arbitration of the amount of monetary damages sustained by a landowner and caused by the construction, maintenance, or repair of a pipeline or underground storage facility, and if either party has not appointed its arbitrator or agreed to an arbitrator under the agreement within thirty days after the other party has invoked the arbitration provisions of the agreement by written notice to the other party by restricted certified mail, the landowner or the pipeline company may petition a magistrate in the county where the real property is located for the appointment of an arbitrator to serve in the stead of the arbitrator who would have been appointed or agreed to by the other party. Before filing the petition the landowner or pipeline company shall give notice of the petitioning of the magistrate

by restricted certified mail to the other party and file proof of mailing with the petition.

If after hearing, the magistrate finds that the landowner or pipeline company has not been diligent in appointing or reasonable in agreeing to an arbitrator, the magistrate shall appoint an impartial arbitrator who shall have all of the powers and duties of an arbitrator appointed or agreed to by the other party under the agreement.

For purposes of this section only, "landowner" means the person who signed the easement or other written agreement, or the person's heirs, successors, and assigns.

95 Acts, ch 192, §2
Section is retroactive to July 1, 1993; 95 Acts, ch 192, §62
NEW section

479B.26 Subsequent pipeline or underground storage facility.

A pipeline company shall not construct a subsequent pipeline or underground storage facility upon its existing easement when a damage claim from the installation of its previous pipeline on that easement has not been resolved unless that claim is under litigation or arbitration, or is the subject of a proceeding pursuant to section 479B.30.

With the exception of claims for damage to drain tile and future crop deficiency, for this section to apply, landowners and tenants must submit their claims in writing for damages caused by construction of the pipeline or underground storage facility within one year of final cleanup on the real property by the pipeline company.

95 Acts, ch 192, §53
NEW section

479B.27 Damage agreement.

A pipeline company shall not construct a pipeline or underground storage facility until a written statement is on file with the board as to how damages resulting from the construction of the pipeline shall be determined and paid, except in cases of eminent domain. The pipeline company shall provide a copy of the statement to the landowner.

95 Acts, ch 192, §54
NEW section

479B.28 Negotiated fee.

In lieu of a one-time lump sum payment for an easement or other property interest allowing a pipeline to cross property or allowing underground storage of hazardous liquids, a landowner and the pipeline company may negotiate an annual fee, to be paid over a fixed number of years. Unless the easement provides otherwise, the annual fee shall run with the land and shall be payable to the owner of record.

95 Acts, ch 192, §55
NEW section

479B.29 Particular damage claims.

1. The loss of gain by or the death or injury of livestock caused by the interruption or relocation of

normal feeding of the livestock caused by the construction or repair of a pipeline or underground storage facility is a compensable loss and shall be recognized by a pipeline company.

2. A claim for damage for future crop deficiency within the easement strip shall not be precluded from renegotiation under section 6B.52 on the grounds that it was apparent at the time of settlement unless the settlement expressly releases the pipeline company from claims for damage to the productivity of the soil. The landowner shall notify the pipeline company in writing thirty days prior to harvest in each year to assess crop deficiency.

95 Acts, ch 192, §56

Section is retroactive to July 1, 1993; 95 Acts, ch 192, §62

NEW section

479B.30 Determination of construction damages.

1. The county board of supervisors shall determine when construction of a pipeline or underground storage facility has been completed in that county for the purposes of this section. Not less than ninety days after the completion of construction and if an agreement cannot be made as to damages, a landowner whose land was affected by the construction of the pipeline or underground storage facility or the pipeline company may file with the board of supervisors a petition asking that a compensation commission determine the damages arising from construction of the pipeline.

2. If the board of supervisors by resolution approves the petition, the landowner or pipeline company shall commence the proceeding by filing an application with the chief judge of the judicial district for the county for the appointment of a compensation commission as provided in section 6B.4. The application shall contain all of the following information:

a. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

b. A description of the nature of the damage claimed to have occurred and the amount of the damage claimed.

c. The name and address of the pipeline company claimed to have caused the damage or the name and address of the affected landowner.

3. After the commissioners have been appointed, the applicant shall serve notice on the pipeline company or the landowner stating all of the following:

a. That a compensation commission has been appointed to determine the damages caused by the construction of the pipeline or underground storage facility.

b. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

c. The date, time, and place when the commissioners will view the premises and proceed to appraise the damages and that the pipeline company or landowner may appear before the commissioners.

Sections 6B.10 to 6B.13 apply to this notice. If more

than one landowner petitions the county board of supervisors, the application to the chief judge, notice to the pipeline company, and appraisal of damages shall be consolidated into one application, notice, and appraisal. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the landowners by doing so.

4. The commissioners shall view the land at the time provided in the notice and assess the damages sustained by the landowner by reason of the construction of the pipeline or underground storage facility and they shall file their report with the sheriff. The appraisal of damages returned by the commissioners is final unless appealed. After the appraisal of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice by ordinary mail to the pipeline company and the landowner of the date the appraisal of damages was made, the amount of the appraisal, and that any interested party may appeal to the district court within thirty days of the date of mailing. The sheriff shall endorse the date of mailing of notice on the original appraisal of damages. At the time of appeal, the appealing party shall give written notice to the adverse party or the party's attorney and the sheriff.

5. Chapter 6B applies to this section to the extent it is applicable and consistent with this section.

6. The pipeline company shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the landowner as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the pipeline company prior to the determination of damages; if the award does not exceed one hundred ten percent, the landowners shall pay the fees and costs incurred by the pipeline company. The pipeline company shall file with the sheriff an affidavit setting forth the most recent offer made to the landowner. Commissioners shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The pipeline company shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial of the appeal the same or a lesser amount of damages is awarded than was allowed by the commission from which the appeal was taken.

7. As used in this section, "damages" means compensation for damages to the land, crops, and other personal property caused by the construction of a pipeline and its attendant structures or underground storage facility but does not include compensation for a property interest, and "landowner" includes a farm tenant.

8. The provisions of this section do not apply if the easement provides for any other means of negotiation or arbitration.

95 Acts, ch 192, §57

Section is retroactive to July 1, 1993; 95 Acts, ch 192, §62

NEW section

479B.31 Subsequent tiling.

All additional costs of new tile construction caused by an existing pipeline or underground storage facility shall be paid by the pipeline company. To receive compensation under this section, the landowner or agent of the landowner shall either present an invoice specifying the additional costs caused by the presence of the pipeline which is accompanied by a written verification of the additional costs by the

county engineer or soil and water conservation district conservationist or reach an agreement with the pipeline company on the project design and share of the cost to be paid by the pipeline company during the planning of the tiling project.

95 Acts, ch 192, §58

Section is retroactive to July 1, 1993; 95 Acts, ch 192, §62

NEW section

CHAPTER 480**UNDERGROUND FACILITIES INFORMATION****480.3 Notification center established — participation.**

1. *a.* A statewide notification center is established and shall be organized as a nonprofit corporation pursuant to chapter 504A. The center shall be governed by a board of directors which shall represent and be elected by operators, excavators, and other persons who participate in the center. The board shall, with input from all interested parties, determine the operating procedures and technology needed for a single statewide notification center, and establish a notification process and competitive bidding procedure to select a vendor to provide the notification service. The terms of the agreement for the notification service may be modified from time to time by the board, and the agreement shall be reviewed, with an opportunity to receive new bids, no less frequently than every three years.

b. Upon the selection of a vendor pursuant to paragraph "a", the board shall notify the chairperson of the utilities board in writing of the selection. The board shall submit an annual report to the chairperson of the utilities board including an annual audit and review of the services provided by the notification center and the vendor.

c. The board is subject to chapters 21 and 22.

2. The board shall implement the latest and most cost-effective technological improvements for the center in order to provide operators and excavators with the most accurate data available and in a timely manner to allow operators and excavators to perform

their responsibilities with the minimum amount of interruptions.

3. Every operator shall participate in and share in the costs of the notification center. The financial condition and the transactions of the notification center shall be audited at least once each year by a certified public accountant. The notification center shall not provide any form of aid or make a contribution to a political party or to the campaign of a candidate for political or public office. In addition to any applicable civil penalty, as provided in section 480.6, a violation of this section constitutes a simple misdemeanor.

95 Acts, ch 112, §1

Section amended

480.9 Liability for owner of farmland.

An owner of farmland used in a farm operation, as defined in section 352.2, who complies with the requirements of this chapter shall not be held responsible for any damages to an underground facility, including fiber optic cable, if the damage occurred on the farmland in the normal course of the farm operation, unless the owner intentionally damaged the underground facility or acted with wanton disregard or recklessness in causing the damage to the underground facility. For purposes of this section, an "owner" includes a family member, employee, or tenant of the owner.

95 Acts, ch 192, §59

NEW section

CHAPTER 481A**WILDLIFE CONSERVATION****481A.1 Definitions.**

Words and phrases as used in this chapter and chapters 350, 456A, 456B, 457A, 461A through 461C, 462A, 462B, 463B, 464A, 465A through 465C, 481B, 482, 483A, 484A, and 484B and such other chapters as relate to the subject matter of these chapters shall be construed as follows:

1. "Alien" shall not be construed to mean any person who has applied for naturalization papers.

2. "Amphibian" means a member of the class Amphibia.

3. "Aquaculture" means the controlled propagation, growth, and harvest of aquatic organisms, including, but not limited to fish, amphibians, reptiles,

mollusks, crustaceans, gastropods, algae, and other aquatic plants, by an aquaculturist.

4. "Aquaculture unit" means all private waters for aquaculture with or without buildings, used for the purpose of propagating, raising, holding, or harvesting aquatic organisms for commercial purposes.

5. "Aquaculturist" means an individual involved in producing, transporting, or marketing aquatic products from private waters for commercial purposes.

6. "Bag limit" or "possession limit" is the number of any kind of game, fish, bird or animal or other wildlife form permitted to be taken or held in a specified time.

7. "Bait" includes, but is not limited to, minnows, green sunfish, orange-spotted sunfish, gizzard shad, frogs, crayfish, salamanders, and mussels.

8. "Biological balance" means that condition when the number of animals present over the long term is at or near the number of animals of a particular species that the available habitat is capable of supporting.

9. "Bird" means a member of the class Aves.

10. "Buy" means to purchase, offer to purchase, barter for, trade for, or lease.

11. "Closed season" is that period of time during which hunting, fishing, trapping or taking is prohibited.

12. "Commercial purposes" means selling, giving, or furnishing to others.

13. "Commission" means the natural resource commission.

14. "Contraband" as used in the laws pertaining to the work of the commission shall mean anything, the possession of which was illegally procured, or the possession of which is unlawful.

15. "Department" means the department of natural resources.

16. "Director" means the director of the department or the director's designee.

17. "Fish" means a member of the class Pisces.

18. "Frog" means a member of the order Anura.

19. "Fur-bearing animals" means the following which are declared to be fur-bearing animals for the purpose of regulation and protection under the Code: beaver, badger, mink, otter, muskrat, raccoon, skunk, opossum, spotted skunk or civet cat, weasel, coyote, bobcat, wolf, groundhog, red fox, and gray fox. This chapter does not apply to domesticated fur-bearing animals.

20. "Game" means all of the animals specified in this subsection except those designated as not protected, and includes the heads, skins, and any other parts, and the nests and eggs of birds and their plumage.

a. The Anatidae: such as swans, geese, brant, and ducks.

b. The Rallidae: such as rails, coots, mudhens, and gallinules.

c. The Limicolae: such as shorebirds, plovers, surfbirds, snipe, woodcock, sandpipers, tattlers, godwits, and curlews.

d. The Gallinae: such as wild turkeys, grouse, pheasants, partridges, and quail.

e. The Columbidae: such as mourning doves and wild rock doves only.

f. The Sciuridae: such as gray squirrels and fox squirrels.

g. The Leporidae: cottontail rabbits and jack-rabbits only.

h. The Cervidae: such as elk or deer, other than farm deer. As used in this paragraph, "farm deer" means an animal belonging to the cervidae family and classified as part of the dama species of the dama genus, commonly referred to as fallow deer; part of the elaphus species of the cervus genus, commonly referred to as red deer or elk; or part of the nippon species of the cervus genus, commonly referred to as sika. However, a farm deer does not include any unmarked free-ranging elk.

21. "Measurement of fish" is the length from end of nose to longest tip of tail.

22. "Minnows" means chubs, suckers, shiners, dace, stonerollers, mud minnows, redhorse, blunt-nose, and fathead minnows.

23. "Mussels" means the pearly fresh water mussels, clams or naiads, and their shells.

24. "Open season" is that period of time during which hunting, fishing, trapping or taking is permitted.

25. "Person" shall mean any person, firm, partnership or corporation.

26. "Possession" is both active and constructive possession and any control of things referred to.

27. "Private waters for aquaculture" means waters confined within an artificial containment, such as man-made ponds, vats, tanks, raceways, and other indoor or outdoor facilities constructed wholly within or on the land of an owner or lessee and used for aquaculture.

28. "Reptile" means a member of the class Reptilia.

29. "Sell" or "sale" is selling, bartering, exchanging, offering or exposing for sale.

30. "Spawn" means any of the eggs of any fish, amphibian, or mussel.

31. "Take" or "taking" or "attempting to take" or "hunt" is any pursuing, or any hunting, fishing, killing, trapping, snaring, netting, searching for or shooting at, stalking or lying in wait for any game, animal, bird, or fish protected by the state laws or rules adopted by the commission whether or not such animal be then subsequently captured, killed, or injured.

32. "Transport" or "transportation" is all carrying or moving or causing to be carried or moved.

33. "Turtle" means any member of the order Testudines.

34. "Wild animal" means a wild mammal, bird, fish, amphibian, reptile, or other wildlife found in this state, whether game or nongame, migratory or nonmigratory, the ownership and title to which is claimed by this state.

35. "Wild mammal" means a member of the class Mammalia.

481A.65 Licenses.

The director, after investigation, may issue to any person a scientific collector's license, a wildlife salvage permit, educational project permit, or a wildlife rehabilitation permit. A scientific collector's license will authorize the licensee to collect for scientific purposes only, any birds, nests, eggs, or wildlife. A wildlife salvage permit will authorize the permittee to salvage for educational purposes, any birds, nests, eggs, or animals according to the rules of the department. An educational project permit authorizes the permittee to collect, keep, or possess for educational purposes birds, fish, or wildlife which are not endangered, threatened, or otherwise specially managed according to the rules of the department. A wildlife rehabilitation permit will authorize the permittee to possess for rehabilitation purposes only, any orphaned or injured wildlife according to the rules of

the department. A person to whom a license or permit is issued shall not dispose of any birds, nests, eggs, or wildlife or their parts except upon written permission of the director. The application for such licenses and permits shall be made upon blanks furnished by the department. The commission shall establish, by rule, the tenure and applicable fee for each permit authorized in this section. Each holder of a license or permit shall, by January 31 of each year, file with the department a report showing all specimens collected or possessed under authority of the license or permit. Upon a showing of cause the department may enter and inspect the premises and collections authorized by this section. A license or permit may be revoked by the director, after due notice, at any time for cause.

95 Acts, ch 46, §1
Section amended

CHAPTER 483A

FISHING AND HUNTING LICENSES, CONTRABAND, AND GUNS

483A.1 Licenses — fees.

Except as otherwise provided in this chapter, no person shall fish, trap, hunt, pursue, catch, kill or take in any manner, or use or have possession of, or sell or transport all or any portion of any wild animal, bird, game or fish, the protection and regulation of which is desirable for the conservation of the resources of the state, without first procuring a license or certificate so to do and the payment of a fee as follows:

- 1. Fishing licenses:
 - a. Legal residents except as otherwise provided\$ 10.50
 - b. Nonresident license\$ 22.50
 - c. Seven-day license for residents and nonresidents\$ 8.50
 - d. Trout stamp\$ 10.00
- 2. Hunting licenses:
 - a. Legal residents except as otherwise provided\$ 12.50
 - b. Deer hunting license for residents \$ 25.00
 - c. Wild turkey hunting license for residents\$ 22.00
 - d. Nonresidents hunting license\$ 60.50
 - e. Deer hunting license for nonresidents\$110.00
 - f. Wild turkey hunting license for nonresidents\$ 55.00
- 3. Hunting and fishing combined licenses:
 - Legal residents except as otherwise provided\$ 23.00
- 4. Hunting, fishing, and fur harvesting combined licenses:
 - Annual fur, fish and game license for residents\$ 37.50
- 5. Fur harvesters, dealers and game breeders licenses:

- a. Fur harvester license for legal residents sixteen years of age or older\$ 20.50
 - b. Fur harvester license for legal residents under sixteen years of age\$ 5.50
 - c. Fur harvester license for nonresidents\$175.50
 - d. Fur dealers license for residents ...\$225.00
 - e. Fur dealers license for nonresidents\$500.00
 - f. Game breeders license\$ 15.00
 - g. Location permit for nonresident fur dealers ...\$ 55.00
- 6. Other licenses:
 - a. Aquaculture unit license, resident \$ 25.00
 - b. Nonresident aquaculture unit license\$ 50.00
 - c. Bait dealer's license for residents \$ 30.00
 - d. Bait dealer's license for nonresidents\$ 60.00
 - e. Taxidermy license\$ 15.00
 - f. Falconry license\$ 20.00
 - g. Nongame support certificate\$ 5.00
 - h. Special wildlife habitat stamp\$ 5.00

95 Acts, ch 12, §1; 95 Acts, ch 46, §2
1995 amendment to subsection 3 takes effect December 15, 1995, and applies to combined licenses sold for the 1996 and subsequent license years
Subsection 3 amended
Subsection 6, paragraph a stricken and former paragraphs b-i relettered as a-h

483A.1A Definitions.

As used in this chapter unless the context otherwise requires:

- 1. "Commission" means the natural resource commission.
- 2. "Department" means the department of natural resources created under section 455A.2.

3. "Director" means the director of the department.
4. "Resident" means a natural person who:
 - a. Meets any of the elements specified in section 321.1A, subsections 1 through 6 only.
 - b. Is a full-time student at an educational institution located in this state and resides in this state while attending the educational institution. A student qualifies as a resident pursuant to this paragraph only for the purpose of purchasing any resident license specified in section 483A.1 or 484A.2.
 - c. Is a nonresident under eighteen years of age whose parent is a resident of this state.

95 Acts, ch 76, §1
NEW subsection 4

483A.17 Tenure of license.

Every license, except lifetime hunting and fishing

licenses, scientific collecting licenses, and falconry licenses, are valid from the date issued to January 10 of the succeeding calendar year for which it is issued. A license shall not be issued prior to December 15 for the subsequent calendar year.

95 Acts, ch 46, §3
Section amended

483A.26 False claims.

A nonresident shall not obtain a resident license by falsely claiming residency in the state. The use of a license by a person other than the person to whom the license is issued is unlawful and nullifies the license.

95 Acts, ch 76, §2
Section amended

CHAPTER 490A

LIMITED LIABILITY COMPANIES

490A.202 Powers.

Unless its articles of organization provide otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power to do all of the following:

1. Sue and be sued, complain, and defend in its name.
2. Transact its business, carry on its operations, and have and exercise the powers granted by this chapter in any state and in any foreign country.
3. Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.
4. Sell, convey, transfer, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.
5. Purchase, receive, subscribe for, or otherwise acquire and hold, to sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in, or obligations of any other person.
6. Make contracts and guaranties, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by mortgage, deed of trust, or pledge of any of its property, franchises, or income.
7. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.
8. Elect and appoint managers, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit.

9. Pay pensions and establish pension plans, pension trusts, profit sharing plans, and benefit and incentive plans for all or any of its current or former members, managers, employees, and agents.

10. Make donations for the public welfare or for religious, charitable, scientific, or educational purposes.

11. Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the limited liability company.

12. Cease its activities and dissolve.

13. Be a promoter, stockholder, partner, member, associate, agent, or manager of any corporation, partnership, limited liability company, joint venture, trust, or other entity.

14. Make and amend operating agreements, not inconsistent with its articles of organization or with the law of this state, for the administration and regulation of its affairs.

15. Transact any lawful business that a corporation, partnership, or other entity may conduct under the law of this state subject, however, to any and all laws and restrictions that govern or limit the conduct of such activity by such corporation, partnership, or other entity.

16. Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the limited liability company is organized.

17. a. Except as otherwise provided in the articles of organization or an operating agreement, or as provided in paragraph "d", indemnify an individual made a party to a proceeding because the individual is or was a member or manager against liability incurred in the proceeding if all of the following apply:

- (1) The individual acted in good faith.
- (2) The individual reasonably believed:

(a) In the case of conduct in the individual's official capacity with the limited liability company, that the individual's conduct was in the limited liability company's best interests.

(b) In all other cases, that the individual's conduct was at least not opposed to the limited liability company's best interests.

(3) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

b. A member's or manager's conduct with respect to an employee benefit plan for a purpose the member or manager reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of paragraph "a", subparagraph (2), subparagraph subdivision (b).

c. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this subsection.

d. A limited liability company shall not indemnify a member or manager under this subsection in either of the following circumstances:

(1) In connection with a proceeding by or in the right of the limited liability company in which the member or manager was adjudged liable to the limited liability company.

(2) In connection with any other proceeding charging improper personal benefit to the member or manager, whether or not involving action in the member's or manager's official capacity, in which the member or manager was adjudged liable on the basis that personal benefit was improperly received by the member or manager.

e. Indemnification permitted under this subsection in connection with a proceeding by or in the right of the limited liability company is limited to reasonable expenses incurred in connection with the proceeding.

95 Acts, ch 138, §1

Subsection 17, paragraph a, unnumbered paragraph 1 amended

490A.401 Name.

1. A limited liability company name must contain the words "Limited Company" or "Limited Liability Company" or the abbreviation "L.C." or "L.L.C." or words or abbreviations of like import in another language.

2. A limited liability company name shall not contain any of the following:

a. The words "Corporation", "Incorporated", "Limited Partnership" or the abbreviations "Corp.", "Inc." or "L.P." or words or abbreviations of like import in another language.

b. Any word or phrase the use of which is prohibited by law for such a limited liability company.

3. Except as authorized by subsections 4 and 5, a limited liability company name must be distinguishable upon the records of the secretary of state from all of the following:

a. The name of a limited liability company, limited partnership, or corporation organized under the law of this state or registered as a foreign limited liability company, foreign limited partnership, or foreign corporation in this state.

b. A name reserved in the manner provided under the law of this state.

c. The fictitious name adopted by a foreign corporation, foreign limited partnership, or foreign limited liability company authorized to transact business in this state, because its real name is unavailable.

d. The corporate name of a nonprofit corporation incorporated or authorized to transact business in this state.

4. A limited liability company may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary's records from one or more of the names described in subsection 3. The secretary of state shall authorize use of the name applied for if one of the following conditions applies:

a. The other entity consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying limited liability company.

b. The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

5. A limited liability company may use the name, including the fictitious name, of another entity that is used in this state if the other entity is formed under the law of this state or is authorized to transact business in this state and the proposed user limited liability company meets one of the following conditions:

a. Has merged with the other entity.

b. Has been formed by reorganization of the other entity.

c. Has acquired all or substantially all of the assets, including the name, of the other entity.

6. This chapter does not control the use of fictitious names; however, if a limited liability company uses a fictitious name in this state it shall deliver to the secretary of state for filing a certified copy of the resolution of the limited liability company adopting the fictitious name.

95 Acts, ch 138, §2

Subsection 1 amended

490A.702 Management of limited liability company.

1. Unless the articles of organization or an operating agreement provides for management of a limited liability company by a manager or managers, management of a limited liability company shall be vested in its members.

2. Unless otherwise provided in the articles of organization and except as provided in subsection 3,

every member is an agent of the limited liability company for the purpose of its business or affairs. The act of any member, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the ordinary course the business or affairs of the limited liability company shall bind the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

3. If the articles of organization provide that management of the limited liability company is vested in a manager or managers the following apply:

a. A member, acting solely in the capacity as a member, is not an agent of the limited liability company.

b. Every manager is an agent of the limited liability company for the purpose of its business or affairs, unless otherwise provided in the articles of organization or an operating agreement. The act of any manager with agency authority, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the ordinary course the business or affairs of the limited liability company shall bind the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

4. An act of a manager or a member which is not apparently for the carrying on in the ordinary course of business of the limited liability company does not bind the limited liability company unless authorized in accordance with the articles of organization or an operating agreement, at the time of the transaction or at any other time.

5. An act of a manager or member in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

6. For purposes of this section, a person is deemed to have knowledge of a provision in the articles of organization limiting the agency authority of a manager or class of managers.

95 Acts, ch 138, §3, 4
Subsection 3, paragraph b amended
NEW subsection 6

490A.1301 Dissolution — general provisions.

A limited liability company organized under this chapter is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:

1. At the time or on the happening of an event specified in this chapter or in the articles of organization or an operating agreement to cause dissolution.

2. Upon the unanimous written consent of the members.

3. Unless otherwise provided in the articles of organization or an operating agreement, upon the death, insanity, retirement, resignation, withdrawal, expulsion, bankruptcy, or dissolution of a member or occurrence of any other event that terminates the continued membership of a member in the limited liability company, unless the business of the limited liability company is continued by the consent of the members in the manner stated in the articles of organization or an operating agreement or if not so stated, by the unanimous consent of the remaining members.

4. The entry of a decree of judicial dissolution under section 490A.1302.

95 Acts, ch 138, §5
Subsection 3 amended

490A.1501 Definitions.

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

1. "Employees" or "agents" does not include clerks, stenographers, secretaries, bookkeepers, technicians, or other persons who are not usually and ordinarily considered by custom and practice to be practicing a profession nor any other person who performs all that person's duties for the professional limited liability company under the direct supervision and control of one or more managers, employees, or agents of the professional limited liability company who are duly licensed in this state to practice a profession which the limited liability company is authorized to practice in this state. This chapter does not require any such persons to be licensed to practice a profession if they are not required to be licensed under any other law of this state.

2. "Foreign professional limited liability company" means a limited liability company organized under laws other than the laws of this state for a purpose for which a professional limited liability company may be organized under this chapter.

3. "Licensed" includes registered, certified, admitted to practice, or otherwise legally authorized under the laws of this state.

4. "Profession" means the profession of certified public accountancy, architecture, chiropractic, dentistry, physical therapy, psychology, professional engineering, land surveying, landscape architecture, law, medicine and surgery, optometry, osteopathy, osteopathic medicine and surgery, accounting practitioner, podiatry, speech pathology, audiology, veterinary medicine, pharmacy, nursing, and marriage and family therapy, provided that the marriage and family therapist is licensed under chapters 147 and 154D.

5. "Professional limited liability company" means a limited liability company subject to this subchapter, except a foreign professional limited liability company.

6. "Regulating board" means any board, commission, court, or governmental authority which, under the laws of this state, is charged with the licensing, registration, certification, admission to practice, or other legal authorization of the practitioners of any profession.

7. "Voluntary transfer" includes a sale, voluntary assignment, gift, pledge, or encumbrance; a voluntary change of legal or equitable ownership or beneficial interest; or a voluntary change of persons having voting rights with respect to any membership interest, except as proxies; but does not include a

transfer of an individual's membership interest or other property to a guardian or conservator appointed for that individual or the individual's property.

95 Acts, ch 138, §6
Subsection 4 amended

CHAPTER 499

COOPERATIVE ASSOCIATIONS

499.30 Distribution of earnings.

The directors shall annually dispose of the earnings of the association in excess of its operating expenses as follows:

1. To provide a reasonable reserve for depreciation, obsolescence, bad debts, or contingent losses or expenses.

2. *a.* To the extent that the cooperative association is operating on a pooling basis, the board of directors of the cooperative association shall determine the portion of the remaining earnings derived from the pool that will be added to the surplus. The cooperative association is operating on a pooling basis, if the association markets, sells, or handles an agricultural product and all of the following apply:

(1) The product is a pool composed by commingling units of the same kind of product which are contributed to the cooperative association by its members.

(2) The earnings of the association are computed without deducting a charge for products delivered by members of the association who are contributing units to be commingled in the product pool.

The board of directors may provide an advance payment to the members of the association contributing units of the product to be commingled in the product pool during the contribution period.

b. To the extent that the cooperative association is not operating on a pooling basis as provided in this subsection, at least ten percent of the remaining earnings must be added to surplus until surplus equals either thirty percent of the total of all capital paid in for stock or memberships, plus all unpaid patronage dividends, plus certificates of indebtedness payable upon liquidation, earnings from non-member business, and earnings arising from the earnings of other cooperative organizations of which the association is a member, or one thousand dollars, whichever is greater. No additions shall be made to surplus when it exceeds either fifty percent of the total, or one thousand dollars, whichever is greater.

3. Not less than one percent nor more than five percent of earnings in excess of reserves may be placed in an educational fund, to be used as the directors deem suitable for teaching or promoting cooperation.

4. After disposing of earnings as provided in subsections 1 and 2, the cooperative association shall pay any fixed dividends on stock or memberships.

5. Notwithstanding an association's articles of incorporation, for each taxable year of the association, the association shall allocate all remaining net earnings to the account of each member, including subscribers described in section 499.16, ratably in proportion to the business the member did with the association during that year. The directors shall determine, or the articles of incorporation or bylaws of the association may specify, the percentage or the amount of the allocation to be currently paid in cash. However, for a cooperative association other than a public utility as defined in section 476.1, the amount to be currently payable in cash shall not exceed twenty percent of the allocation during any period when unpaid local deferred patronage dividends of deceased members for prior years are outstanding. Notwithstanding the twenty percent allocation limitation, the directors of a cooperative association or the articles of incorporation or bylaws of the association may specify any percentage or amount to be currently paid in cash to the estates of deceased natural persons who were members. All the remaining allocation not paid in cash shall be transferred to a revolving fund as provided in section 499.33 and credited to the members and subscribers. The credits in the revolving fund are referred to in this chapter as deferred patronage dividends.

95 Acts, ch 106, §1
Subsection 5 amended

499.33 Use of revolving fund.

1. The directors may use a revolving fund to pay the obligations or add to the capital of the association or retire its preferred stock. In that event the deferred patronage dividends credited to members constitute a charge on the revolving fund, on future additions to the revolving fund, and on the corporate assets, subordinate to existing or future creditors and preferred stockholders. Except as otherwise provided in subsection 2, deferred patronage dividends for any year have priority over those for subsequent years.

2. *a.* Prior to other payments of deferred patronage dividends or redemption of preferred stock held by members, the directors of a cooperative association, other than a cooperative association which is a public utility as defined in section 476.1, shall pay local deferred patronage dividends and redeem local deferred patronage preferred stock of deceased natu-

ral persons who were members, and may pay deferred patronage dividends or may redeem preferred stock of deceased natural persons who were members or of members who become ineligible, without reference to the order of priority.

b. The directors of a cooperative association which is a public utility as defined in section 476.1 may pay deferred patronage dividends and redeem preferred stock of deceased natural persons who were

members, and may pay all other deferred patronage dividends or redeem preferred stock of members without reference to priority.

3. Payment of deferred patronage dividends or the redemption of preferred stock shall be carried out to the extent and in the manner specified in the bylaws of the association.

95 Acts, ch 106, §2
Section amended

CHAPTER 502

UNIFORM SECURITIES ACT

(Blue Sky Law)

502.207A Expedited registration by filing for small issuers.

1. A security meeting the conditions set forth in this section may be registered by filing as provided in this section.

2. In order to register under this section, the issuer must meet all of the following conditions:

a. The issuer must be a corporation, limited liability company, or partnership organized under the laws of one of the states or possessions of the United States which engages in or proposes to engage in a business other than petroleum exploration or production mining or other extractive industries.

b. The securities must be offered and sold only on behalf of the issuer, and must not be used by any selling security holder to register securities for resale.

3. In order to register under this section, all of the following conditions must be satisfied:

a. The offering price for common stock, the exercise price if the securities are options, warrants, or rights for common stock, or the conversion price if the securities are convertible into common stock must be equal to or greater than five dollars per share. The issuer must not split its common stock, or declare a stock dividend, for two years after effectiveness of the registration, except that in connection with a subsequent registered public offering, the issuer may upon application and consent of the administrator take such action.

b. A commission, fee, or other remuneration shall not be paid or given, directly or indirectly, for the sale of the securities, except for a payment to a broker-dealer or agent registered under this chapter, or except for a payment as permitted by the administrator by rule or by order issued upon written application showing good cause for allowance of a commission, fee, or other remuneration.

c. The issuer or a broker-dealer offering or selling the securities is not or would not be disqualified under rule 505, 17 C.F.R. § 230.505 (2)(iii), adopted under the federal Securities Act of 1933.

d. The aggregate offering price of the offering of securities by the issuer within or outside this state must not exceed one million dollars, less the aggregate

gate offering price for all securities sold within twelve months before the start of, and during the offering of, the securities under rule 504, 17 C.F.R. § 230.504, in reliance on any exemption under section 3(b) of the federal Securities Act of 1933 or in violation of section 5(a) of that Act; provided, that if rule 504, 17 C.F.R. § 230.504, adopted under the Securities Act of 1933, is amended after April 26, 1990, the administrator may by rule increase the limit under this paragraph to conform to that increased amount.

e. An offering document meeting the disclosure requirements of rule 502(b)(2), 17 C.F.R. § 230.502(b)(2), adopted under the Securities Act of 1933, must be delivered to each purchaser in the state prior to the sale of the securities, unless the administrator by rule or order provides for disclosure different from that rule.

f. The issuer must file with the administrator an application for registration and the offering document to be used in connection with the offer and sale of securities.

g. The issuer must pay to the administrator a fee of one hundred dollars and is not required to pay the filing fee set forth in section 502.208, subsection 2.

4. Unless the administrator issues a stop order denying the effectiveness of the registration, as provided in section 502.209, the registration becomes effective on the fifth business day after the registration has been filed with the administrator, or earlier if the administrator permits a shorter time period between registration and effectiveness.

5. In connection with an offering registered under this section, a person may be registered as an agent of the issuer under section 502.301 by the filing of an application by the issuer with the administrator for the registration of the person as an agent of the issuer and the paying of a fee of ten dollars. Notwithstanding any other provision of this chapter, the registration of the agent shall be effective until withdrawn by the issuer or until the securities registered pursuant to the registration statement have all been sold, whichever occurs first. The registration of an agent shall become effective when ordered by the administrator or on the fifth business day after the

agent's application has been filed with the administrator, whichever occurs first, and the administrator shall not impose further conditions upon the registration of the agent. However, the administrator may deny, revoke, suspend, or withdraw the registration of the agent at any time as provided in section 502.304. For the purposes of registration of agents under this section, the issuer and agent are not required to post bond. An agent registered solely pursuant to this section is entitled to sell only securities registered under this section.

6. This section is not applicable to any of the following issuers:

- a. An investment company, including a mutual fund.
- b. An issuer subject to the reporting requirements of section 13 or 15(d) of the federal Securities Exchange Act of 1934.
- c. A direct participation program, unless otherwise permitted by the administrator by rule or order for good cause.
- d. A blind pool or other offering for which the specific business or properties cannot now be described, unless the administrator determines that the blind pool is a community development, seed, or venture cap-

ital fund for which the administrator permits a waiver.

7. Notwithstanding any other provision of this chapter, the administrator shall not deny effectiveness to or suspend or revoke the effectiveness of a registration under this section on the basis of section 502.209, subsection 1, paragraph "h", and the administrator shall not impose the conditions specified in section 502.208, subsection 8, subsection 9, paragraph "b", or subsection 12. The administrator may issue a stop order pursuant to section 502.209 to filers under this section for any of the following additional reasons:

- a. The issuer's principal place of business is not in this state.
- b. At least fifty percent of the issuer's full-time employees are not located in this state.
- c. At least eighty percent of the net proceeds of the offering are not going to be used in connection with the operations of the issuer in this state.
- d. If the issuer is a seed or venture capital fund, at least fifty percent of the moneys received from the sale of the securities will not be used to make seed or venture capital investments in this state.

95 Acts, ch 67, §35
Subsection 5 amended

CHAPTER 504A

IOWA NONPROFIT CORPORATION ACT

504A.64A Reincorporation.

Notwithstanding section 504A.64, if the period of duration of incorporation of a domestic corporation organized or existing under chapter 504, as the chapter existed prior to July 1, 1990, or a predecessor chapter has expired, or if a permit held by a foreign corporation under the provisions of chapter 504, as the chapter existed prior to July 1, 1990, is no longer valid, but the corporation has continued to act as a nonprofit corporation as provided in the chapter under which it was organized, the trustees, directors, or members of the corporation may reincorporate under this chapter and thus become subject to its provisions, and all the property and rights of the corporation shall vest in the corporation as reincorporated for the use and benefit of the corporation. The corporation shall reincorporate in the same manner as though voluntarily electing to adopt the provisions of this chapter in accordance with section 504A.100. This section shall not apply to a corporation which has been dissolved pursuant to section 504A.87.

95 Acts, ch 188, §1

Section applies retroactively to July 1, 1990; 95 Acts, ch 188, §4

Repealed effective July 1, 2000; 95 Acts, ch 188, §3

NEW section

504A.100 Application to existing corporations.

1. Except for this subsection, this chapter shall not apply to or affect corporations subject to the provisions of chapters 176, 497, 498, 499, or 512B. Such

corporations shall continue to be governed by all laws of this state heretofore applicable thereto and as the same may hereafter be amended. This chapter shall not be construed as in derogation of or as a limitation on the powers to which such corporations may be entitled.

2. This chapter shall not apply to any domestic corporation heretofore organized or existing under the provisions of chapter 504 of the Code nor, for a period of two years from and after July 4, 1965, to any foreign corporation holding a permit under the provisions of said chapter on the said date, unless such domestic or foreign corporation shall voluntarily elect to adopt the provisions of this chapter and shall comply with the procedure prescribed by the provisions of subsection 3 of this section.

3. Any domestic corporation organized or existing under the provisions of chapter 504 may voluntarily elect to adopt the provisions of this chapter and thereby become subject to its provisions and, during the period of two years from and after the effective date of this chapter, any foreign corporation holding a permit under the provisions of said chapter on said date may voluntarily elect to adopt the provisions of this chapter and thereby become subject to the provisions of this chapter. The procedure for electing to adopt the provisions of this chapter shall be as follows:

- a. A resolution reciting that the corporation voluntarily adopts this chapter and designating the address of its initial registered office and the name of

its registered agent or agents at that address and, if the name of the corporation does not comply with this chapter, amending the articles of incorporation of the corporation to change the name of the corporation to one complying with the requirements of this chapter, shall be adopted by the procedure prescribed by this chapter for the amendment of articles of incorporation. If the corporation has issued shares of stock, the resolution shall contain a statement of that fact including the number of shares authorized, the number issued and outstanding, and a statement that all issued and outstanding shares of stock have been delivered to the corporation to be canceled upon the adoption of this chapter by the corporation, or will be canceled upon receipt by the corporation, and that from and after the effective date of adoption the authority of the corporation to issue shares of stock is terminated. As to foreign corporations, a resolution shall be adopted by the board of directors, reciting that the corporation voluntarily adopts this chapter, and designating the address of its registered office in this state and the name of its registered agent or agents at that address and, if the name of the corporation does not comply with this chapter, setting forth the name of the corporation with the changes which it elects to make in the name conforming to the requirements of this chapter for use in this state.

b. Upon adoption of the required resolution or resolutions, an instrument shall be executed by the corporation which shall set forth both of the following:

- (1) The name of the corporation.
- (2) Each such resolution adopted by the corporation and the date of its adoption.

c. As to domestic corporations such instrument shall be delivered to the secretary of state for filing and recording in the secretary of state's office.

d. As to foreign corporations, such instrument shall be delivered to the secretary of state for filing in the secretary of state's office and the corporation shall at the same time deliver also to the secretary of state for filing in the secretary of state's office any annual report which is then due.

e. The secretary of state shall not file such instrument with respect to a domestic corporation unless at the time thereof such corporation is validly existing and in good standing in that office under the provisions of chapter 504 of the Code. If the articles of incorporation of such corporation have not heretofore been filed in the office of the secretary of state, but are on file in the office of a county recorder, no such instrument of adoption shall be accepted by the secretary of state until the corporation shall have caused its articles of incorporation and all amendments duly certified by the proper county recorder to be recorded in the office of the secretary of state. Upon the filing of such instrument the secretary of state shall issue a certificate as to the filing of such instrument and deliver such certificate to the corporation or its representative.

Upon the issuance of such certificate by the secretary of state:

- (1) All of the provisions of this chapter shall thereafter apply to the corporation and thereupon

every such foreign corporation shall be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter, and shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter.

(2) In the case of any corporation with issued shares of stock, the holders of such issued shares who surrender them to the corporation to be canceled upon the adoption of this chapter by the corporation becoming effective, shall be and become members of the corporation with one vote for each share of stock so surrendered until such time as the corporation by proper corporate action relative to the election, qualification, terms and voting power of members shall otherwise prescribe.

4. Any domestic corporation which elects to adopt the provisions of this chapter by complying with the provisions of subsection 3 of this section may, at the same time, amend or restate its articles of incorporation by complying with the provisions of this chapter with respect to amending articles of incorporation or restating articles of incorporation, as the case may be.

5. The provisions of this chapter becoming applicable to any domestic or foreign corporation shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of chapter 504 prior to the filing by the secretary of state in the secretary of state's office of the instrument manifesting the election of such corporation to adopt the provisions of this chapter as provided in subsection 3 of this section.

6. Except for the exceptions and limitations of subsection 1 of this section, this chapter shall apply to: all domestic corporations organized after the date on which this chapter became effective; domestic corporations organized or existing under chapter 504 which voluntarily elect to adopt the provisions of this chapter and comply with the provisions of subsection 3 of this section; all foreign corporations conducting or seeking to conduct affairs within this state and not holding, July 4, 1965, a valid permit so to do; foreign corporations holding, on the date the chapter becomes effective, a valid permit under the provisions of chapter 504 which, during the period of two years from and after said date, voluntarily elect to adopt the provisions of this chapter and comply with the provisions of subsection 3 of this section; and, upon the expiration of the period of two years from and after July 4, 1965, all foreign corporations holding such a permit on July 4, 1965.

7. Upon the expiration of a period of two years from and after the date on July 4, 1965, except for the exceptions and limitations of subsection 1 of this section, this chapter shall apply to every foreign corporation holding a valid permit to do business within this state or seeking to conduct affairs within this state. Every foreign corporation holding a valid permit to do business within this state on July 4, 1965, which has not meanwhile adopted this chapter by complying with the provisions of subsection 3 of

this section, shall at the expiration of two years from and after said date be deemed to have elected to adopt this chapter by not voluntarily withdrawing from the state, and thereupon every such foreign corporation, subject to the limitations set forth in its certificate of authority, shall be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter, and shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter.

8. Within eight months after this chapter becomes applicable to any foreign corporation pursuant to the provisions of subsection 7 of this section, the board of directors of such foreign corporation shall adopt a resolution designating the address of its registered office in this state and the name of its registered agent or agents at such address and, if the name of such corporation does not comply with this chapter, setting forth the name of the corporation with the changes which it elects to make therein conforming to the requirements of this chapter for use in this state.

Upon adoption of the required resolution or resolutions, an instrument or instruments shall be executed by the foreign corporation by its president or a vice president and by its secretary or assistant secretary and verified by one of the officers signing such instrument, which shall set forth the name of the corporation, each resolution adopted as required by the provisions of this subsection, and the date of the adoption thereof. Such instrument shall be delivered to the secretary of state for filing in the secretary of state's office. Upon the filing of such instrument by a foreign corporation the secretary of state shall issue a certificate as to the filing of such instrument and deliver such certificate to the corporation or its representative. The secretary of state

shall not file any annual report of any foreign corporation subject to the provisions of this subsection unless and until said corporation has fully complied with the provisions of this paragraph and, in such event, such foreign corporation shall be subject to the penalties prescribed in this chapter for failure to file such report within the time as provided therefor in this chapter.

9. The first annual report required to be filed by a domestic or foreign corporation under this chapter shall be filed between May 1 and July 1 of the year next succeeding the calendar year in which it becomes subject to the chapter.

10. No corporation to which the provisions of this chapter apply shall be subject to the provisions of chapter 504.

11. The provisions of sections 504A.96 and 504A.97 shall apply to any action required or permitted to be taken under this section.

12. Except as otherwise provided in this section, existing corporations shall continue to be governed by the laws of this state heretofore applicable thereto.

13. Corporations existing under chapter 504 shall be subject to this chapter on July 1, 1990, except that the corporations shall be subject to sections 504A.8 and 504A.83 on January 1, 1997. A corporate existence of a corporation that is not in compliance on the records of the secretary of state with sections 504A.8 and 504A.83 on June 30, 1997, is terminated, effective July 1, 1997. A corporation whose existence is terminated pursuant to this subsection may be reinstated. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the termination of its corporate existence as if such termination had never occurred. The secretary of state shall adopt rules governing the reinstatement of a corporation pursuant to this subsection.

95 Acts, ch 188, §2
Subsection 13 amended

CHAPTER 505

INSURANCE DIVISION

505.22 Certain religious organization activities exempt from regulation.

A religious organization which, through its publication to subscribers, solicits funds for the payment of medical expenses of other subscribers, shall not be considered to be engaging in the business of insurance for purposes of this chapter or any other provision of this title, and shall not be subject to the jurisdiction of the commissioner of insurance, if all of the following apply:

1. The religious publication is provided by a non-profit charitable organization described in section 501(c)(3) of the Internal Revenue Code.
2. Participation is limited to subscribers who are members of the same denomination or religion.
3. The publication is registered with the United States postal service and acts as an organizational

clearinghouse for information between subscribers who have financial, physical, or medical needs, and subscribers who choose to assist with those needs, matching subscribers with the present ability to pay with subscribers with a present financial or medical need.

4. The organization, through its publication, provides for the payment for subscriber financial or medical needs through direct payments from one subscriber to another.

5. The organization, through its publication, suggests amounts to contribute that are voluntary among the subscribers, with no assumption of risk or promise to pay either among the subscribers or between the subscribers and the publication.

95 Acts, ch 185, §3
NEW section

CHAPTER 507

EXAMINATION OF INSURANCE COMPANIES

507.2 Authority, scope, and scheduling of examinations.

1. The commissioner or any of the commissioner's examiners may conduct an examination under this chapter of any company as often as the commissioner deems appropriate, but at a minimum, shall conduct an examination of any domestic insurer licensed in this state no less than once every five years. In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the examiners' handbook adopted by the national association of insurance commissioners and in effect when the commissioner exercises discretion under this section.

2. For purposes of completing an examination of any company pursuant to this chapter, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

3. In lieu of an examination under this chapter of any foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the regulatory authority for insurance for the company's state of domicile or port-of-entry state.

95 Acts, ch 185, §4
Subsection 3 amended

507.10 Examination reports.

1. *General description.* All examination reports shall be comprised only of facts appearing upon the books, records, or other documents of the company, its agents, or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

2. *Filing of examination report.* No later than sixty days following completion of the examination, the examiner in charge shall file with the division a verified written report of examination under oath. Upon receipt of the verified report and after administrative review, the division shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

3. *Adoption of report on examination.* Within twenty days of the end of the period allowed for the receipt of written submissions or rebuttals, the com-

missioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's work papers and enter an order which does one of the following:

a. Adopts the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law or a rule or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation.

b. Rejects the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refile pursuant to subsection 1 above.

c. Calls for an investigatory hearing with no less than twenty days' notice to the company for purposes of obtaining additional documentation, data, information, and testimony.

4. Orders and procedures.

a. All orders entered pursuant to subsection 3, paragraph "a", shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner work papers, and any written submissions or rebuttals. Any such order is a final administrative decision and may be appealed pursuant to chapter 17A, and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

b. Any hearing conducted under subsection 3, paragraph "c", by the commissioner or an authorized representative, shall be conducted as a nonadversarial, confidential, investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or indicated as a result of the commissioner's review of relevant work papers or by the written submission or rebuttal of the company. Within twenty days of the conclusion of any such hearing, the commissioner shall enter an order pursuant to subsection 3, paragraph "a".

(1) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner's work papers which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or a representative acting on the commissioner's behalf may issue subpoenas for the attendance of any witnesses or the

production of any documents deemed relevant to the investigation whether under the control of the division of insurance, the company, or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or a representative acting on the commissioner's behalf shall be under oath and preserved for the record.

This section does not require the division of insurance to disclose any information or records which would indicate or show the existence of any investigation or activity of a criminal or juvenile justice agency.

(2) The hearing shall proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. Thereafter the company and the division may present testimony relevant to the investigation. Cross-examination shall be conducted only by the commissioner or the commissioner's representative. The company and the division shall be permitted to make closing statements and may be represented by counsel.

5. *Publication and use.*

a. Upon the adoption of the preliminary examination report under subsection 3, paragraph "a", the commissioner shall hold the content of the final examination report as private and confidential information

not subject to disclosure and it is not a public record under chapter 22, for a period of twenty days except to the extent provided in subsection 2. After the twenty-day period has elapsed, the commissioner may open the final report for public inspection so long as no court of competent jurisdiction has stayed its publication.

b. The commissioner is not prevented from disclosing the content of an examination report, preliminary examination report or results, or any matter relating to the report, to an insurance department of any other state or country, or to law enforcement officials of this or any other state or an agency of the federal government at any time, so long as such agency or office receiving the report, or matters relating to the report, agrees in writing to maintain the confidentiality of the report or such matters in a manner consistent with this chapter.

c. If the commissioner determines that regulatory action is appropriate as a result of any examination, the commissioner may initiate any proceeding or action as provided by law.

95 Acts, ch 191, §25
Subsection 4, paragraph b, subparagraph (1), unnumbered paragraph 2 amended

CHAPTER 507A

UNAUTHORIZED INSURERS

507A.4 Transactions where law not applicable.

The provisions of this chapter shall not apply to:

1. The lawful transaction of surplus lines insurance as permitted by sections 515.147 to 515.149.
2. The lawful transaction of reinsurance by insurers.
3. Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.
4. Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state, covering subjects of insurance not resident located, or expressly to be performed in this state at the time of issue, and which transactions are subsequent to the issuance of the policy.
5. Transactions in this state involving group or blanket insurance and group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business.
6. Transactions in this state involving any policy of insurance issued prior to July 1, 1967.
7. Any life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding educational or scientific institutions organized and operated without profit to any private shareholder or

individual by issuing insurance and annuity contracts direct from the home office of the company and without agents or representatives in this state only to or for the benefit of such institutions and to individuals engaged in the services of such institutions; nor shall this chapter apply to any life, disability or annuity contracts issued by such life insurance company, provided such contracts otherwise comply with the statutes.

8. Insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk including strikes and war risks commonly insured under ocean or wet marine forms of policy.

9. Transactions involving risks located in this state where the policy or contract of insurance for such risk was principally negotiated and delivered outside this state and was lawfully issued in a state or foreign country in which the foreign or alien insurer was authorized to do an insurance business, and where such insurer has no contact with this state except in connection with inspections or losses required by virtue of the contract or policy of insurance covering the risk located in this state.

10. Transactions involving a multiple employer welfare arrangement, as defined in section 3 of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002, paragraph 40, if the multiple

employer welfare arrangement meets all of the following conditions:

a. The arrangement is administered by an authorized insurer or an authorized third-party administrator.

b. The arrangement has been in existence and provided health insurance for at least fifteen years prior to July 1, 1994.

c. The arrangement was established by a trade, industry, or professional association of employers that has a constitution or bylaws, and has been organized and maintained in good faith for at least twenty continuous years prior to July 1, 1994.

Subsection 10 repealed effective July 1, 1996; 94 Acts, ch 1038, §3; 95 Acts, ch 33, §1

Section not amended; footnote updated

507A.10 Cease and desist order — civil penalty.

Upon a determination by the commissioner, after a hearing conducted pursuant to chapter 17A, that a person or insurer has violated a provision of this chapter, the commissioner shall reduce the findings of the hearing to writing and deliver a copy of the findings to the person or insurer, may issue an order requiring the person or insurer to cease and desist from engaging in the conduct resulting in the violation, and may assess a civil penalty of not more than fifty thousand dollars against the person or insurer.

95 Acts, ch 185, §5

Section amended

CHAPTER 507B

INSURANCE TRADE PRACTICES

507B.4 Unfair methods of competition and unfair or deceptive acts or practices defined.

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

1. *Misrepresentations and false advertising of insurance policies.* Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which does any of the following:

a. Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

b. Misrepresents the dividends or share of the surplus to be received on any insurance policy.

c. Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy.

d. Is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates.

e. Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof.

f. Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy.

g. Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy.

h. Misrepresents any insurance policy as being shares of stock.

i. Misrepresents any insurance policy to consumers by using the terms "burial insurance", "funeral insurance", "burial plan", or "funeral plan" in its names or titles, unless the policy is made with a funeral provider as beneficiary who specifies and fixes a price under contract with an insurance com-

pany. This paragraph does not prevent insurers from stating or advertising that insurance benefits may provide cash for funeral or burial expenses.

j. Is a misrepresentation, including any intentional misquote of premium rate, for the purpose of inducing or tending to induce the purchase of an insurance policy.

2. *False information and advertising generally.* Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive or misleading.

3. *Defamation.* Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such person.

4. *Boycott, coercion and intimidation.* Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

5. *False statements and entries.*

a. Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing

directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

b. Knowingly making any false entry of a material fact in any book, report or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to the business of such person in any book, report or statement of such person.

6. *Stock operations and advisory board contracts.* Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

7. *Unfair discrimination.*

a. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

b. Making or permitting any unfair discrimination between insureds of the same class for essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance other than life or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

c. Making or permitting any discrimination in the sale of insurance solely on the basis of domestic abuse as defined in section 236.2.

8. *Rebates.*

a. Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or any thing of value whatsoever not specified in the contract.

b. Nothing in subsection 7 or paragraph "a" of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices:

(1) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or oth-

erwise rebating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or rebatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders.

(2) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

(3) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experienced thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

9. *Unfair claim settlement practices.* Committing or performing with such frequency as to indicate a general business practice any of the following:

a. Misrepresenting pertinent facts or insurance policy provisions relating to coverages of issue.

b. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

d. Refusing to pay claims without conducting a reasonable investigation based upon all available information.

e. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.

f. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear, or failing to include interest on the payment of claims when required under section 511.38.

g. Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds.

h. Attempting to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application.

i. Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured.

j. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made.

k. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

l. Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

m. Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

n. Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

10. *Misrepresentation in insurance applications.*

Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual.

10A. *Omission from insurance application.* Failing to designate on an insurance policy application the licensee who has solicited and written the policy.

11. *Rating organizations.* Any violation of section 515F.16.

12. *Minor traffic violations.* Failure of a person to comply with section 516B.3.

95 Acts, ch 185, §6
See §513C.9 for additional unfair practices
Subsection 7, NEW paragraph c

CHAPTER 507E

INSURANCE FRAUD

Sections 507E.1, 507E.3, and 507E.7 are effective July 1, 1995; effectiveness of remainder of chapter is contingent upon receipt of federal grant for implementation and the appropriation of state matching funds;
94 Acts, ch 1072, §9; 95 Acts, ch 185, §46

507E.3 Fraudulent submissions — penalty.

1. For purposes of this chapter, “*statement*” includes, but is not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damage, bill for services, diagnosis, prescription, hospital or physician record, X ray, test result, or other evidence of loss, injury, or expense.

2. A person commits a class “D” felony if the person, with the intent to defraud an insurer, does either of the following:

a. Presents or causes to be presented to an insurer, any written document or oral statement, including a computer-generated document, as part of, or in support of, a claim for payment or other benefit

pursuant to an insurance policy, knowing that such document or statement contains any false information concerning a material fact.

b. Assists, abets, solicits, or conspires with another to present or cause to be presented to an insurer, any written document or oral statement, including a computer-generated document, that is intended to be presented to any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy, knowing that such document or statement contains any false information concerning a material fact.

95 Acts, ch 185, §46
Section effective July 1, 1995; see 95 Acts, ch 185, §46, for removal of contingency for §507E.1, 507E.3, and 507E.7
Section not amended; footnote revised

CHAPTER 508

LIFE INSURANCE COMPANIES

508.5 Capital and surplus required.

A stock life insurance company shall not be authorized to transact business under this chapter with less than two million five hundred thousand dollars capital stock fully paid for in cash and two million five hundred thousand dollars of surplus paid in cash or invested as provided by law. A stock life insurance company shall not increase its capital stock unless the amount of the increase is fully paid in cash. The stock shall be divided into shares of not less than one dollar par value each. A stock life insurance company

authorized to do business in Iowa that undergoes a change of control as defined under chapter 521A shall maintain the minimum capital and surplus requirements mandated by this section.

95 Acts, ch 185, §7
Section amended

508.9 Mutual companies — conditions.

Level premium and natural premium life insurance companies organized under the laws of this state upon the mutual plan shall, before issuing

policies, have actual applications on at least two hundred and fifty lives for an average amount of one thousand dollars each. A list of the applications giving the name, age, residence, amount of insurance, and annual premium of each applicant shall be filed with the commissioner of insurance, and a deposit made with the commissioner of an amount equal to three-fifths of the whole annual premium on the applications, in cash or the securities required by section 508.5. In addition, a deposit of cash or securities of the character provided by law for the investment of funds for life insurance companies in the sum of five million dollars shall be made with the commissioner, which shall constitute a security fund for the protection of policyholders. The contribution to the security fund shall not give to contributors to the fund or to other persons any voting or other power in the management of the affairs of the company. The security fund may be repaid to the contributors to the security fund with interest at six percent from the date of contribution, at any time, in whole or in part, if the repayment does not reduce the surplus of the company below the amount of five million dollars and then only if consent in writing for the repayment is obtained from the commissioner of insurance. Upon compliance with this section, the commissioner shall issue to the mutual company the certificate prescribed in this chapter. A mutual insurance company authorized to do business in Iowa that undergoes a change of control as defined in chapter 521A shall maintain the minimum surplus requirement mandated by this section.

95 Acts, ch 185, §8
Section amended

508.36 Standard valuations.

This section shall be known as the "Standard Valuation Law."

1. *Reserve valuation.* The commissioner shall annually value, or cause to be valued, the reserve liabilities, referred to in this section as reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest, and the net level premium method or other methods used in the calculation of such reserves. In calculating the reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required in this section of any foreign or alien company, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard provided for in this section and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at

least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

2. *Actuarial opinion of reserves.* This subsection is effective January 1, 1996.

a. *General.* A life insurance company doing business in this state shall annually submit the written opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and are in compliance with applicable laws of this state. The commissioner shall define by rule the requirements and content of this opinion and add any other items deemed to be necessary.

b. *Actuarial analysis of reserves and assets supporting such reserves.*

(1) Unless exempted by rule, a life insurance company shall also annually include in the opinion required by paragraph "a", an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of policies and contracts specified by the commissioner by rule, when considered with respect to the assets held by the company associated with the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, are sufficient for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

(2) The commissioner may provide by rule for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section.

c. *Requirements for actuarial analysis.* An opinion required by paragraph "b" shall be governed by the following provisions:

(1) A memorandum, in form and substance acceptable to the commissioner as specified by rule, shall be prepared to support each actuarial opinion.

(2) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the rules or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the commissioner.

d. *Requirement for all opinions.* An opinion required under this section is governed by the following provisions:

(1) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1995.

(2) The opinion shall apply to all business in force, including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rule.

(3) The opinion shall be based on standards adopted from time to time by the actuarial standards board and on such additional standards as the commissioner may by rule prescribe.

(4) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(5) For the purposes of this section, "qualified actuary" means a member in good standing of the American academy of actuaries who meets the requirements of the commissioner as specified by rule.

(6) Except in cases of fraud or willful misconduct, a qualified actuary is not liable for damages to any person, other than to the insurance company and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(7) Disciplinary action which may be taken by the commissioner against the company or the qualified actuary shall be defined in rules adopted by the commissioner.

(8) Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the opinion, shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by rules adopted pursuant to this section. Notwithstanding this subparagraph, the memorandum or other material may be released by the commissioner if either of the following applies:

(a) The commissioner receives the written consent of the company with which the opinion is associated.

(b) The American academy of actuaries requests that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material.

Once any portion of the confidential memorandum is cited by the company in its marketing, is cited before any governmental agency other than a state insurance department, or is released by the company to the news media, all portions of the confidential memorandum are no longer confidential.

3. *Computations of minimum standards.* Except as otherwise provided in subsections 4, 5, and 12, the minimum standard for the valuation of all such policies and contracts issued prior to July 1, 1994, shall be that provided by the laws in effect immediately prior to such date. Except as otherwise provided in subsections 4, 5, and 12, the minimum standard for

the valuation of all such policies and contracts shall be the commissioner's reserve valuation methods defined in subsections 6, 7, 10, and 11, five percent interest for group annuity and pure endowment contracts and three and one-half percent interest for all other policies and contracts, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after July 1, 1974, four percent interest for such policies issued prior to January 1, 1980, five and one-half percent interest for single premium life insurance policies and four and one-half percent interest for all other such policies issued on and after January 1, 1980, and the following tables:

a. For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies, the following:

(1) The commissioner's 1941 standard ordinary mortality table for policies issued prior to the operative date of section 508.37, subsection 5, paragraph "a".

(2) The commissioner's 1958 standard ordinary mortality table for such policies issued on or after the operative date of section 508.37, subsection 5, paragraph "c", provided that for any category of policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured.

(3) For policies issued on or after the operative date of section 508.37, subsection 5, paragraph "c", any of the following:

(a) The commissioner's 1980 standard ordinary mortality table.

(b) At the election of the company for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with ten-year select mortality factors.

(c) Any ordinary mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such policies.

b. For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies, the following:

(1) For policies issued prior to the operative date of section 508.37, subsection 5, paragraph "b", the 1941 standard industrial mortality table.

(2) For policies issued on or after the operative date of section 508.37, subsection 5, paragraph "b", the commissioner's 1961 standard industrial mortality table, or any industrial mortality table adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such policies.

c. For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 standard

annuity mortality table or, at the option of the company, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

d. For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the group annuity mortality table for 1951, or a modification of the table approved by the commissioner, or at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

e. For total and permanent disability benefits in or supplementary to ordinary policies or contracts, the following:

(1) For policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates adopted after 1980 by the national association of insurance commissioners and approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such policies.

(2) For policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either of the tables identified under subparagraph (1), or at the option of the company, the class (3) disability table (1926).

(3) For policies issued prior to January 1, 1961, the class (3) disability table (1926).

A table used under this paragraph "e" shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

f. For accidental death benefits in or supplementary to policies, the following:

(1) For policies issued on or after January 1, 1966, the 1959 accidental death benefits table, or any accidental death benefits table adopted after 1980 by the national association of insurance commissioners and approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such policies.

(2) For policies issued on or after January 1, 1961, and prior to January 1, 1966, either of the tables identified under subparagraph (1), or at the option of the company, the intercompany double indemnity mortality table.

(3) For policies issued prior to January 1, 1961, the intercompany double indemnity mortality table.

A table used under this paragraph "f" shall be combined with a mortality table for calculating the reserves for life insurance policies.

g. For group life insurance, life insurance issued on the substandard basis, and other special benefits, tables approved by the commissioner.

4. *Computation for minimum standards for annuities.* Except as provided in subsection 5, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or

after the operative date of this subsection, and for all annuities and pure endowments purchased on or after the operative date of this subsection under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation methods defined in subsections 6 and 7, and the following tables and interest rates:

a. For individual annuity and pure endowment contracts issued prior to January 1, 1980, excluding any disability and accidental death benefits in such contracts, both of the following:

(1) The 1971 individual annuity mortality table, or any modification of this table approved by the commissioner.

(2) Six percent interest for single premium immediate annuity contracts, and four percent interest for all other individual annuity and pure endowment contracts.

b. For individual single premium immediate annuity contracts issued on or after January 1, 1980, excluding any disability and accidental death benefits in such contracts, both of the following:

(1) One of the following tables:

(a) The 1971 individual annuity mortality table.

(b) An individual annuity mortality table, adopted after 1980 by the national association of insurance commissioners and approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such contracts.

(c) A modification of the tables identified in subparagraph subdivisions (a) and (b) approved by the commissioner.

(2) Seven and one-half percent interest.

c. For individual annuity and pure endowment contracts issued on or after January 1, 1980, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, both of the following:

(1) One of the following tables:

(a) The 1971 individual annuity mortality table.

(b) An individual annuity mortality table adopted after 1980 by the national association of insurance commissioners and approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such contracts.

(c) A modification of the tables identified in subparagraph subdivisions (a) and (b) approved by the commissioner.

(2) Five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other such individual annuity and pure endowment contracts.

d. For all annuities and pure endowments purchased prior to January 1, 1980, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, both of the following:

(1) The 1971 group annuity mortality table or any modification of this table approved by the commissioner.

(2) Six percent interest.

e. For all annuities and pure endowments purchased on or after January 1, 1980, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, both of the following:

(1) One of the following tables:

(a) The 1971 group annuity mortality table.

(b) A group annuity mortality table adopted after 1980 by the national association of insurance commissioners and approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such annuities and pure endowments.

(c) A modification of the tables identified in subparagraph subdivisions (a) and (b) approved by the commissioner.

(2) Seven and one-half percent interest.

After July 1, 1973, a company may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1979, which shall be the operative date of this section for such company, provided, if a company makes no election, the effective date of this section for a company is January 1, 1979.

5. *Computation of minimum standard by calendar year of issue.*

a. *Applicability of this subsection.* The calendar year statutory valuation interest rates, as defined in this subsection, shall be used in determining the minimum standard for the valuation of all of the following:

(1) All life insurance policies issued in a particular calendar year, on or after the operative date of section 508.37, subsection 5, paragraph "c".

(2) All individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1995.

(3) All annuities and pure endowments purchased in a particular calendar year on or after January 1, 1995, under group annuity and pure endowment contracts.

(4) The net increase, if any, in a particular calendar year on or after January 1, 1995, in amounts held under guaranteed interest contracts.

b. *Calendar year statutory valuation interest rates.*

(1) The calendar year statutory valuation interest rates, referred to in this paragraph as "I", shall be determined as follows and the results rounded to the nearer one-quarter of one percent:

(a) For life insurance,

$$I \text{ equals } .03 + W(R1 - .03) + 2(R2 - .09),$$

where R1 is the lesser of R and .09, R2 is the greater of R and .09, R is the reference interest rate defined in paragraph "d" of this subsection, and W is the weighting factor defined in paragraph "c" of this subsection.

(b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

$$I \text{ equals } .03 + W(R - .03),$$

where R1 is the lesser of R and .09, R2 is the greater of R and .09, R is the reference interest rate defined in paragraph "d" of this subsection, and W is the weighting factor defined in paragraph "c" of this subsection.

(c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue-year basis, except as stated in subparagraph subdivision (b), the formula for life insurance stated in subparagraph subdivision (a) applies to annuities and guaranteed interest contracts with guarantee durations in excess of ten years, and the formula for single premium immediate annuities stated in subparagraph subdivision (b) applies to annuities and guaranteed interest contracts with guarantee durations of ten years or less.

(d) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in subparagraph subdivision (b) applies.

(e) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change-in-fund basis, the formula for single premium immediate annuities stated in subparagraph subdivision (b) applies.

(2) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined under subparagraph (1), subparagraph subdivision (a) without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent, the calendar year statutory valuation interest rate for the life insurance policies is equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980, using the reference interest rate defined in 1979, and shall be determined for each subsequent calendar year regardless of the operative date of section 508.37, subsection 5, paragraph "c".

c. *Weighting factors.*

(1) The weighting factors referred to in paragraph "b" are given in the following tables:

(a) *Weighting Factors for Life Insurance:*

Guarantee Duration (Years)	Weighting Factors
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy.

(b) The weighting factors for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options is .80.

(c) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in subparagraph subdivision (b), shall be as specified in subparagraph subdivision parts (i), (ii), and (iii) of this subparagraph subdivision, according to the rules and definitions in subparagraph subdivision parts (iv), (v), and (vi) of this subparagraph subdivision:

(i) For annuities and guaranteed interest contracts valued on an issue-year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type		
	A	B	C
5 or less	.80	.60	.50
More than 5, but not more than 10	.75	.60	.50
More than 10, but not more than 20	.65	.50	.45
More than 20	.45	.35	.35

(ii) For annuities and guaranteed interest contracts valued on a change-in-fund basis, the factors shown in subparagraph subdivision part (i) of this subparagraph subdivision increased by:

Plan Type	A	B	C
		.15	.25

(iii) For annuities and guaranteed interest contracts valued on an issue-year basis, other than those with no cash settlement options, which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change-in-fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in subparagraph subdivision part (i) of this subparagraph subdivision or derived in subparagraph subdivision part (ii) of this subparagraph subdivision increased by:

Plan Type	A	B	C
		.05	.05

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees

interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee durations in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(v) "Plan type", as used in subparagraph subdivision parts (i), (ii), and (iii) of this subparagraph subdivision, is defined as follows:

"Plan Type A": At any time, the policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or may withdraw funds without that adjustment but in installments over five years or more, or may withdraw funds as in immediate life annuity; or no withdrawal is permitted.

"Plan Type B": Before expiration of the interest rate guarantee, the policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or may withdraw funds without that adjustment but in installments over five years or more; or no withdrawal is permitted. At the end of interest rate guarantee, funds may be withdrawn without adjustment in a single sum or installments over less than five years.

"Plan Type C": The policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(vi) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue-year basis or on a change-in-fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue-year basis. As used in this section, an issue-year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change-in-fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

d. *Reference interest rate.* The reference interest rate referred to in paragraph "b" is defined as follows:

(1) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year next preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(2) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or year of purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(3) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue-year basis, except as stated in subparagraph (2), with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(4) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue-year basis, except as stated in subparagraph (2), with guarantee duration of ten years or less, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(5) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(6) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change-in-fund basis, except as stated in subparagraph (2), the average over a period of twelve months, ending on June 30 of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

e. Alternative method for determining reference interest rates. In the event that the monthly average of the composite yield on seasoned corporate bonds is no longer published by Moody's Investors Service, Inc., or in the event that the national association of insurance commissioners determines that the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc. is no longer appropriate for the determination of the reference interest rate, an al-

ternative method for determination of the reference interest rate, which is adopted by the national association of insurance commissioners and approved by rule adopted by the commissioner, may be substituted.

6. *Reserve valuation method — life insurance and endowment benefits.*

a. Except as otherwise provided in subsections 7, 10, and 12, reserves calculated according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of future guaranteed benefits provided for by such policies, over the present value, at the date of valuation, of any future modified net premiums for such policies. The modified net premiums for such policy is the uniform percentage of the respective contract premiums for the benefits such that the present value, at the date of issue of the policy, of all modified net premiums shall be equal to the sum of the present value, at the date of valuation, of such benefits provided for by the policy and the excess of the amount determined in subparagraph (1) over the amount determined in subparagraph (2), as follows:

(1) A net level annual premium equal to the present value at the date of issue, of the benefits provided for after the first policy year, divided by the present value at the date of issue, of an annuity of one per annum payable on the first, and each subsequent, anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year more than the age of the insured at issue of the policy.

(2) A net one-year term premium for the benefits provided for in the first policy year.

b. However, for a life insurance policy issued on or after January 1, 1998, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such additional premium and which provides an endowment benefit or a cash surrender value or a combination of such benefit or value in an amount greater than the additional premium, the reserve according to the commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such additional premium shall be, except as otherwise provided in subsection 10, the greater of the reserve as of such policy anniversary calculated as described in paragraph "a" and the reserve as of such policy anniversary calculated as described in paragraph "a", but with the following modifications:

(1) The value defined in paragraph "a" being reduced by fifteen percent of the amount of such excess first year premium.

(2) All present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date.

(3) The policy being assumed to mature on such date as an endowment.

(4) The cash surrender value provided on such date being considered as an endowment benefit.

In making the above comparison the mortality and interest bases stated in subsections 4 and 5 shall be used.

c. Reserves according to the commissioner's reserve valuation method shall be calculated pursuant to a method consistent with this subsection for all of the following:

(1) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums.

(2) Group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code.

(3) Disability and accidental death benefits in all policies and contracts.

(4) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts.

7. *Reserve valuation method — annuity and pure endowment benefits.* This subsection applies to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code.

Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the

terms of such contracts to determine nonforfeiture values.

8. *Minimum reserves.*

a. A company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the operative date of section 508.37, shall not be less than the aggregate reserves calculated in accordance with the methods set forth in subsections 6, 7, 10, and 11, and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

b. A company's aggregate reserves for all policies, contracts, and benefits shall not be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by subsection 2.

9. *Optional reserve calculation.* Reserves for all policies and contracts issued prior to the operative date of section 508.37, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required prior to July 1, 1994.

Reserves for any category of policies, contracts, or benefits, as established by the commissioner, issued on or after the operative date of section 508.37, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard as provided in this section, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits as provided in this section.

A company which at any time adopts a standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard as provided in this section may adopt, with the approval of the commissioner, any lower standard of valuation, not to be lower than the minimum as provided in this section, provided, however, that, for purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by subsection 2 shall not be deemed to be the adoption of a higher standard of valuation.

10. *Reserve calculation — valuation net premium exceeding the gross premium charge.*

a. If in any contract year the gross premium charged by a life insurance company on a policy or contract is less than the valuation net premium for the policy or contract, as calculated by the method used in calculating the reserve for such policy or contract but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract is the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the re-

serve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards established in subsections 4 and 5.

b. However, for any life insurance policy issued on or after January 1, 1998, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value, or a combination of such benefit and value, in an amount greater than the excess premium, the provisions of paragraph "a" apply as if the method actually used in calculating the reserve for such policy is the method established in subsection 6, excluding paragraph "b" of that subsection. The minimum reserve of the policy at each policy anniversary shall be the greater of the minimum reserve calculated pursuant to subsection 6 and the minimum

reserve calculated in accordance with this subsection.

11. *Reserve calculation — indeterminate premium plans.* In the case of any plan of life insurance which provides for future premium determination, the amounts of such premium which are to be determined by the insurance company based on estimates of future experience, or in the case of any plan of life insurance or annuity, the minimum reserves of which cannot be determined by the methods established in subsections 6, 7, and 10, the reserves which are held under the plan must be appropriate in relation to the benefits and the pattern of premiums for that plan, and shall be computed by a method which is consistent with this section, as determined by rules adopted by the commissioner.

12. *Minimum standards for health (disability, accident, and sickness) plans.* The commissioner shall adopt rules containing the minimum standards applicable to the valuation of health, disability, and sickness and accident plans.

95 Acts, ch 67, §36

Subsection 8, paragraph a amended

CHAPTER 509A

GROUP INSURANCE FOR PUBLIC EMPLOYEES

509A.6 Contract with insurance carrier, health maintenance organization, or organized delivery system.

The governing body may contract with a nonprofit corporation operating under the provisions of this chapter or chapter 514 or with any insurance company having a certificate of authority to transact an insurance business in this state with respect of a group insurance plan, which may include life, accident, health, hospitalization and disability insurance during period of active service of such employees, with the right of any employee to continue such life insurance in force after termination of active service at such employee's sole expense; may contract with a nonprofit corporation operating under and governed by the provisions of this chapter or chapter 514 with respect of any hospital or medical service plan; and may contract with a health maintenance organization or an organized delivery system authorized to operate in this state with respect to health maintenance organization or organized delivery system activities.

95 Acts, ch 162, §10
Section amended

509A.12 Deferred compensation program for governmental employees.

At the request of an employee, the governing body or the county board of supervisors shall by contractual agreement acquire an individual or group life insurance contract, annuity contract, interest in a mutual fund, security, or any other deferred payment contract for the purpose of funding a deferred compensation program. The contract acquired for an employee shall be in accordance with the plan document and from any company that is authorized to do business in this state, or through an Iowa-licensed salesperson that the employee selects on a group or individual basis. When the state of Iowa acquires an investment product pursuant to the plan document the state does not become a shareholder, stockholder, or owner of a corporation in violation of Article VIII, section 3, of the Constitution of the State of Iowa or any other provision of law.

This section is in addition to any benefit program provided by law for employees of the state or its political subdivisions.

95 Acts, ch 162, §11
Section amended

CHAPTER 513A

THIRD-PARTY PAYORS OF HEALTH CARE BENEFITS

513A.8 Exception to jurisdiction.

A third-party payor that is a multiple employer welfare arrangement, as defined in section 3 of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002, paragraph 40, that meets the criteria set forth in section 507A.4, subsection 10, is not subject to the jurisdiction of the commissioner of

insurance pursuant to this chapter even though it may be subject to the jurisdiction of another agency of the state or federal government.

Section repealed effective July 1, 1996; 94 Acts, ch 1038, §3; 95 Acts, ch 33, §1

Section not amended; footnote updated

CHAPTER 513B

SMALL GROUP HEALTH COVERAGE

513B.2 Definitions.

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

1. "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of section 513B.4, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods utilized by the small employer carrier in establishing premium rates for applicable health benefit plans.

2. "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or which could have been charged under a rating system for that class of business, by the small employer carrier to small employers with similar case characteristics for health insurance plans with the same or similar coverage.

3. "Basic health benefit plan" means a plan which is offered pursuant to section 513B.14.

4. "Carrier" means any person who provides health insurance in this state. For the purposes of this subchapter, carrier includes a licensed insurance company, a prepaid hospital or medical service plan, a health maintenance organization, a multiple employer welfare arrangement or any other person providing a plan of health insurance subject to state insurance regulation.

5. "Case characteristics" means demographic or other relevant characteristics of a small employer, as determined by a small employer carrier, which are considered by the insurer in the determination of premium rates for the small employer. Claim experience, health status, and duration of coverage since issue are not case characteristics for the purpose of this subchapter.

6. "Class of business" means all or a distinct grouping of small employers as shown on the records of the small employer carrier.

a. A distinct grouping may only be established by the small employer carrier on the basis that the applicable health benefit plans meet one or more of the following requirements:

(1) The plans are marketed and sold through individuals and organizations which are not participating in the marketing or sales of other distinct groupings of small employers for the small employer carrier.

(2) The plans have been acquired from another small employer carrier as a distinct grouping of plans.

(3) The plans are provided through an association with membership of not less than fifty small employers which has been formed for purposes other than obtaining insurance.

b. A small employer carrier may establish no more than two additional groupings under each of the subparagraphs in paragraph "a" on the basis of underwriting criteria which are expected to produce substantial variation in the health care costs.

c. The commissioner may approve the establishment of additional distinct groupings upon application to the commissioner and a finding by the commissioner that such action would enhance the efficiency and fairness of the small employer insurance marketplace.

7. "Commissioner" means the commissioner of insurance.

8. "Division" means the division of insurance.

9. "Eligible employee" means an employee who works on a full-time basis and has a normal work week of thirty or more hours. The term includes a sole proprietor, a partner of a partnership, and an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer, but does not include an employee who works on a part-time, temporary, or substitute basis.

10. a. "Health benefit plan" or "plan" means any hospital or medical expense incurred policy or cer-

tificate, major medical expense insurance, hospital or medical service plan contract, or health maintenance organization subscriber contract.

b. "Health benefit plan" does not include accident-only, credit, dental, Medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical-payment insurance.

c. "Health benefit plan" also does not include policies or certificates of specified disease, hospital confinement indemnity, or limited benefit health insurance if the carrier offering such policies or certificates complies with all of the following:

(1) The carrier files on or before March 1 of each year a certification with the commissioner that contains the following statement and information:

(a) A statement from the carrier certifying that policies or certificates described in this paragraph "c" are being offered and marketed as supplemental health insurance and not as a substitute for hospital or medical expense insurance or major medical expense insurance.

(b) A summary description of each policy or certificate described in this paragraph "c" including the average annual premium rates or range of premium rates in cases where premiums vary by age, gender, or other factors, which are to be charged for such policies and certificates in this state.

(2) If a policy or certificate described in this paragraph "c" is offered for the first time in this state on or after July 1, 1993, the carrier files with the commissioner the information and statement required in subparagraph (1) at least thirty days prior to the date such policy or certificate is issued or delivered in this state.

11. "Index rate" means for each class of business for small employers with similar case characteristics the average of the applicable base premium rate and the corresponding highest premium rate.

12. "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period for which such individual is entitled to enroll under the terms of the health benefit plan, provided the initial enrollment period is a period of at least thirty days. An eligible employee or dependent shall not be considered a late enrollee if any of the following apply:

a. The individual meets all of the following:

(1) The individual was covered under qualifying previous coverage at the time of the initial enrollment.

(2) The individual lost coverage under qualifying previous coverage as a result of termination of the individual's employment or eligibility, the involuntary termination of the qualifying previous coverage,

death of the individual's spouse, or the individual's divorce.

(3) The individual requests enrollment within thirty days after termination of the qualifying previous coverage.

b. The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

c. A court has ordered that coverage be provided for a spouse or minor or dependent child under a covered employee's health benefit plan and the request for enrollment is made within thirty days after issuance of the court order.

13. "New business premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

14. "Qualifying previous coverage" and "qualifying existing coverage" mean benefits or coverage provided under any of the following:

a. Medicaid pursuant to Title XIX of the Social Security Act, medicare pursuant to Title XVIII of the Social Security Act, or coverage pursuant to the person's service as a member of a branch of the armed forces of the United States.

b. An employer-based health insurance or health benefit arrangement that provides benefits similar to or exceeding benefits provided under a basic health benefit plan.

c. An individual health insurance policy or contract issued by a carrier which provides benefits similar to or exceeding the benefits provided under the basic health benefit plan, provided the policy or contract has been in effect for a period of at least one year.

15. "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect, as determined by the small employer carrier.

16. "Small employer" means a person actively engaged in business who, on at least fifty percent of the employer's working days during the preceding year, employed not less than two and not more than fifty full-time equivalent eligible employees. In determining the number of eligible employees, companies which are affiliated companies or which are eligible to file a combined tax return for purposes of state taxation are considered one employer.

17. "Small employer carrier" means any carrier which offers health benefit plans covering the employees of a small employer.

18. "Standard health benefit plan" means a plan which is offered pursuant to section 513B.14.

CHAPTER 513C

INDIVIDUAL HEALTH INSURANCE MARKET REFORM

513C.1 Short title.

This chapter shall be known and may be cited as the "*Individual Health Insurance Market Reform Act*".

95 Acts, ch 5, §3
NEW section

513C.2 Purpose.

The purpose and intent of this chapter is to promote the availability of health insurance coverage to individuals regardless of their health status or claims experience, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules regarding the renewal of coverage, to establish limitations on the use of pre-existing condition exclusions, to assure fair access to health plans, and to improve the overall fairness and efficiency of the individual health insurance market.

95 Acts, ch 5, §4
NEW section

513C.3 Definitions.

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

1. "*Actuarial certification*" means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that an individual carrier is in compliance with the provisions of section 513C.5 which is based upon the actuary's or individual's examination, including a review of the appropriate records and the actuarial assumptions and methods used by the carrier in establishing premium rates for applicable individual health benefit plans.

2. "*Affiliate*" or "*affiliated*" means any entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

3. "*Basic or standard health benefit plan*" means the core group of health benefits developed pursuant to section 513C.8.

4. "*Block of business*" means all the individuals insured under the same individual health benefit plan.

5. "*Carrier*" means any entity that provides individual health benefit plans in this state. For purposes of this chapter, carrier includes an insurance company, a group hospital or medical service corporation, a fraternal benefit society, a health maintenance organization, and any other entity providing an individual plan of health insurance or health benefits subject to state insurance regulation. "*Carrier*" does not include an organized delivery system.

6. "*Commissioner*" means the commissioner of insurance.

7. "*Director*" means the director of public health appointed pursuant to section 135.2.

8. "*Eligible individual*" means an individual who is a resident of this state and who either has qualifying existing coverage or has had qualifying existing

coverage within the immediately preceding thirty days, or an individual who has had a qualifying event occur within the immediately preceding thirty days.

9. "*Established service area*" means a geographic area, as approved by the commissioner and based upon the carrier's certificate of authority to transact business in this state, within which the carrier is authorized to provide coverage or a geographic area, as approved by the director and based upon the organized delivery system's license to transact business in this state, within which the organized delivery system is authorized to provide coverage.

10. "*Filed rate*" means, for a rating period related to each block of business, the rate charged to all individuals with similar rating characteristics for individual health benefit plans.

11. "*Individual health benefit plan*" means any hospital or medical expense incurred policy or certificate, hospital or medical service plan, or health maintenance organization subscriber contract sold to an individual, or any discretionary group trust or association policy, whether issued within or outside of the state, providing hospital or medical expense incurred coverage to individuals residing within this state. Individual health benefit plan does not include a self-insured group health plan, a self-insured multiple employer group health plan, a group conversion plan, an insured group health plan, accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, or disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

12. "*Organized delivery system*" means an organized delivery system licensed by the director.

13. "*Premium*" means all moneys paid by an individual and eligible dependents as a condition of receiving coverage from a carrier or an organized delivery system, including any fees or other contributions associated with an individual health benefit plan.

14. "*Qualifying event*" means any of the following:

a. Loss of eligibility for medical assistance provided pursuant to chapter 249A or Medicare coverage provided pursuant to Title XVIII of the federal Social Security Act.

b. Loss or change of dependent status under qualifying previous coverage.

c. The attainment by an individual of the age of majority.

15. "*Qualifying existing coverage*" or "*qualifying previous coverage*" means benefits or coverage provided under any of the following:

a. Any group health insurance that provides benefits similar to or exceeding benefits provided under

the standard health benefit plan, provided that such policy has been in effect for a period of at least one year.

b. An individual health insurance benefit plan, including coverage provided under a health maintenance organization contract, a hospital or medical service plan contract, or a fraternal benefit society contract, that provides benefits similar to or exceeding the benefits provided under the standard health benefit plan, provided that such policy has been in effect for a period of at least one year.

c. An organized delivery system that provides benefits similar to or exceeding the benefits provided under the standard health benefit plan, provided that the benefits provided by the organized delivery system have been in effect for a period of at least one year.

16. "*Rating characteristics*" means demographic characteristics of individuals which are considered by the carrier in the determination of premium rates for the individuals and which are approved by the commissioner.

17. "*Rating period*" means the period for which premium rates established by a carrier are in effect.

18. "*Restricted network provision*" means a provision of an individual health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier or the organized delivery system to provide health care services to covered individuals.

95 Acts, ch 5, §5
NEW section

513C.4 Applicability and scope.

1. Except as provided in subsection 2, for purposes of this chapter, carriers that are affiliated companies or that are eligible to file a consolidated tax return shall be treated as one carrier and any restrictions or limitations imposed by this chapter shall apply as if all individual health benefit plans delivered or issued for delivery to residents of this state by such affiliated carriers were issued by one carrier.

2. An affiliated carrier that is a health maintenance organization having a certificate of authority under section 513C.5 shall be considered to be a separate carrier for the purposes of this chapter.

95 Acts, ch 5, §6
NEW section

513C.5 Restrictions relating to premium rates.

1. Premium rates for any block of individual health benefit plan business issued on or after January 1, 1996, or the date rules are adopted by the commissioner of insurance and the director of public health and become effective, whichever date is later, by a carrier subject to this chapter shall be limited to the composite effect of allocating costs among the following:

a. After making actuarial adjustments based upon benefit design and rating characteristics, the

filed rate for any block of business shall not exceed the filed rate for any other block of business by more than twenty percent.

b. The filed rate for any block of business shall not exceed the filed rate for any other block of business by more than thirty percent due to factors relating to rating characteristics.

c. The filed rate for any block of business shall not exceed the filed rate for any other block of business by more than thirty percent due to any other factors approved by the commissioner.

d. Premium rates for individual health benefit plans shall comply with the requirements of this section notwithstanding any assessments paid or payable by the carrier pursuant to any reinsurance program or risk adjustment mechanism.

e. An adjustment applied to a single block of business shall not exceed the adjustment applied to all blocks of business by more than fifteen percent due to the claim experience or health status of that block of business.

f. For purposes of this subsection, an individual health benefit plan that contains a restricted network provision shall not be considered similar coverage to an individual health benefit plan that does not contain such a provision, provided that the differential in payments made to network providers results in substantial differences in claim costs.

2. Notwithstanding subsection 1, the commissioner, with the concurrence of the board of the Iowa individual health benefit reinsurance association established in section 513C.10, may by order reduce or eliminate the allowed rating bands provided under subsection 1, paragraphs "a", "b", "c", and "e", or otherwise limit or eliminate the use of experience rating. The commissioner shall also develop a recommendation for the elimination of age as a rating characteristic, and shall submit such recommendation by January 8, 1996.

3. A carrier shall not transfer an individual involuntarily into or out of a block of business.

4. The commissioner may suspend for a specified period the application of subsection 1, paragraph "a", as to the premium rates applicable to one or more blocks of business of a carrier for one or more rating periods upon a filing by the carrier requesting the suspension and a finding by the commissioner that the suspension is reasonable in light of the financial condition of the carrier.

5. A carrier shall make a reasonable disclosure at the time of the offering for sale of any individual health benefit plan of all of the following:

a. The extent to which premium rates for a specified individual are established or adjusted based upon rating characteristics.

b. The carrier's right to change premium rates, and the factors, other than claim experience, that affect changes in premium rates.

c. The provisions relating to the renewal of policies and contracts.

d. Any provisions relating to any preexisting condition.

e. All plans offered by the carrier, the prices of such plans, and the availability of such plans to the individual.

6. A carrier shall maintain at its principal place of business a complete and detailed description of its rating practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

7. A carrier shall file with the commissioner annually on or before March 15, an actuarial certification certifying that the carrier is in compliance with this chapter and that the rating methods of the carrier are actuarially sound. The certification shall be in a form and manner and shall contain information as specified by the commissioner. A copy of the certification shall be retained by the carrier at its principal place of business. Rate adjustments made in order to comply with this section are exempt from loss ratio requirements.

8. A carrier shall make the information and documentation maintained pursuant to subsection 6 available to the commissioner upon request. The information and documentation shall be considered proprietary and trade secret information and shall not be subject to disclosure by the commissioner to persons outside of the division except as agreed to by the carrier or as ordered by a court of competent jurisdiction.

95 Acts, ch 5, §7
NEW section

513C.6 Renewal of coverage.

1. An individual health benefit plan is renewable at the option of the individual, except in any of the following cases:

- a. Nonpayment of the required premiums.
- b. Fraud or misrepresentation.
- c. The insured individual becomes eligible for Medicare coverage under Title XVIII of the federal Social Security Act.
- d. The carrier elects not to renew all of its individual health benefit plans in the state. In such case, the carrier shall provide notice of the decision not to renew coverage to all affected individuals and to the commissioner in each state in which an affected insured individual is known to reside at least ninety days prior to the nonrenewal of the health benefit plan by the carrier. Notice to the commissioner under this paragraph shall be provided at least three working days prior to the notice to the affected individuals.
- e. The commissioner finds that the continuation of the coverage would not be in the best interests of the policyholders or certificate holders, or would impair the carrier's ability to meet its contractual obligations.

2. A carrier that elects not to renew all of its individual health benefit plans in this state shall be prohibited from writing new individual health benefit plans in this state for a period of five years from the date of the notice to the commissioner.

3. With respect to a carrier doing business in an established geographic service area of the state, this section applies only to the carrier's operations in the service area.

95 Acts, ch 5, §8
NEW section

513C.7 Availability of coverage.

1. A carrier or an organized delivery system, as a condition of issuing individual health benefit plans in this state, shall make available a basic or standard health benefit plan to an eligible individual who applies for a plan and agrees to make the required premium payments and to satisfy other reasonable provisions of the basic or standard health benefit plan. A carrier or an organized delivery system is not required to issue a basic or standard health benefit plan to an individual who meets any of the following criteria:

a. The individual is covered or is eligible for coverage under a health benefit plan provided by the individual's employer.

b. An eligible individual who does not apply for a basic or standard health benefit plan within thirty days of a qualifying event or within thirty days upon becoming ineligible for qualifying existing coverage.

c. The individual is covered or is eligible for any continued group coverage under section 4980b of the Internal Revenue Code, sections 601 through 608 of the federal Employee Retirement Income Security Act of 1974, sections 2201 through 2208 of the federal Public Health Service Act, or any state-required continued group coverage. For purposes of this subsection, an individual who would have been eligible for such continuation of coverage, but is not eligible solely because the individual or other responsible party failed to make the required coverage election during the applicable time period, is deemed to be eligible for such group coverage until the date on which the individual's continuing group coverage would have expired had an election been made.

2. A carrier or an organized delivery system shall issue the basic or standard health benefit plan to an individual currently covered by an underwritten benefit plan issued by that carrier or an organized delivery system at the option of the individual. This option must be exercised within thirty days of notification of a premium rate increase applicable to the underwritten benefit plan.

3. a. A carrier shall file with the commissioner, in a form and manner prescribed by the commissioner, the basic or standard health benefit plan. A basic or standard health benefit plan filed pursuant to this paragraph may be used by a carrier beginning thirty days after it is filed unless the commissioner disapproves of its use.

The commissioner may at any time, after providing notice and an opportunity for a hearing to the carrier, disapprove the continued use by a carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this chapter.

b. An organized delivery system shall file with the director, in a form and manner prescribed by the director, the basic or standard health benefit plan to be used by the organized delivery system. A basic or standard health benefit plan filed pursuant to this paragraph may be used by the organized delivery system beginning thirty days after it is filed unless the director disapproves of its use.

The director may at any time, after providing notice and an opportunity for a hearing to the organized delivery system, disapprove the continued use by an organized delivery system of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this chapter.

4. a. The individual basic or standard health benefit plan shall not deny, exclude, or limit benefits for a covered individual for losses incurred more than twelve months following the effective date of the individual's coverage due to a preexisting condition. A preexisting condition shall not be defined more restrictively than any of the following:

(1) A condition that would cause an ordinarily prudent person to seek medical advice, diagnosis, care, or treatment during the twelve months immediately preceding the effective date of coverage.

(2) A condition for which medical advice, diagnosis, care, or treatment was recommended or received during the twelve months immediately preceding the effective date of coverage.

(3) A pregnancy existing on the effective date of coverage.

b. A carrier or an organized delivery system shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services in an individual health benefit plan for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to such services, provided that the qualifying previous coverage was continuous to a date not more than thirty days prior to the effective date of the new coverage.

5. A carrier or an organized delivery system is not required to offer coverage or accept applications pursuant to subsection 1 from any individual not residing in the carrier's or the organized delivery system's established geographic access area.

6. A carrier or an organized delivery system shall not modify a basic or standard health benefit plan with respect to an individual or dependent through riders, endorsements, or other means to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

95 Acts, ch 5, §9
NEW section

513C.8 Health benefit plan standards.

The commissioner shall adopt by rule the form and level of coverage of the basic health benefit plan and the standard health benefit plan for the individual market which shall provide benefits substantially similar to those as provided for under chapter 513B with respect to small group coverage, but which shall

be appropriately adjusted to reflect the individual market.

95 Acts, ch 5, §10
NEW section

513C.9 Standards to assure fair marketing.

1. A carrier or an organized delivery system issuing individual health benefit plans in this state shall make available the basic or standard health benefit plan to residents of this state. If a carrier or an organized delivery system denies other individual health benefit plan coverage to an eligible individual on the basis of the health status or claims experience of the eligible individual, or the individual's dependents, the carrier or the organized delivery system shall offer the individual the opportunity to purchase a basic or standard health benefit plan.

2. A carrier, an organized delivery system, or an agent shall not do either of the following:

a. Encourage or direct individuals to refrain from filing an application for coverage with the carrier or the organized delivery system because of the health status, claims experience, industry, occupation, or geographic location of the individuals.

b. Encourage or direct individuals to seek coverage from another carrier or another organized delivery system because of the health status, claims experience, industry, occupation, or geographic location of the individuals.

3. Subsection 2, paragraph "a", shall not apply with respect to information provided by a carrier or an organized delivery system or an agent to an individual regarding the established geographic service area of the carrier or the organized delivery system, or the restricted network provision of the carrier or the organized delivery system.

4. A carrier or an organized delivery system shall not, directly or indirectly, enter into any contract, agreement, or arrangement with an agent that provides for, or results in, the compensation paid to an agent for a sale of a basic or standard health benefit plan to vary because of the health status or permitted rating characteristics of the individual or the individual's dependents.

5. Subsection 4 does not apply with respect to the compensation paid to an agent on the basis of percentage of premium, provided that the percentage shall not vary because of the health status or other permitted rating characteristics of the individual or the individual's dependents.

6. Denial by a carrier or an organized delivery system of an application for coverage from an individual shall be in writing and shall state the reason or reasons for the denial.

7. A violation of this section by a carrier or an agent is an unfair trade practice under chapter 507B.

8. If a carrier or an organized delivery system enters into a contract, agreement, or other arrangement with a third-party administrator to provide administrative, marketing, or other services related to the offering of individual health benefit plans in this state, the third-party administrator is subject to

this section as if it were a carrier or an organized delivery system.

95 Acts, ch 5, §11
NEW section

513C.10 Iowa individual health benefit reinsurance association.

1. A nonprofit corporation is established to be known as the Iowa individual health benefit reinsurance association. All persons that provide health benefit plans in this state including insurers providing accident and sickness insurance under chapter 509, 514, or 514A; fraternal benefit societies providing hospital, medical, or nursing benefits under chapter 512B; and health maintenance organizations, organized delivery systems, and all other entities providing health insurance or health benefits subject to state insurance regulation shall be members of this association. The association shall be incorporated under chapter 504A, shall operate under a plan of operation established and approved pursuant to chapter 504A, and shall exercise its powers through a board of directors established under this section.

2. The initial board of directors of the association shall consist of seven members appointed by the commissioner as follows:

a. Four members shall be representatives of the four largest domestic carriers of individual health insurance in the state as of the calendar year ending December 31, 1994.

b. Three members shall be representatives of the three largest carriers of health insurance in the state, excluding Medicare supplement coverage premiums, which are not otherwise represented. In the event a carrier to be represented pursuant to this paragraph does not appoint a representative, the board member shall be a representative of the next largest carrier which satisfies the criteria.

After an initial term, board members shall be nominated and elected by the members of the association.

Members of the board may be reimbursed from the funds of the association for expenses incurred by them as members, but shall not otherwise be compensated by the association for their services.

3. The association shall submit to the commissioner a plan of operation for the association and any amendments to the association's articles of incorporation necessary and appropriate to assure the fair, reasonable, and equitable administration of the association. The plan shall provide for the sharing of losses related to basic and standard plans, if any, on an equitable and proportional basis among the members of the association. If the association fails to submit a suitable plan of operation within one hundred eighty days after the appointment of the board of directors, the commissioner shall adopt rules necessary to implement this section. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner. In addition to other requirements, the plan of operation shall provide for all of the following:

a. The handling and accounting of assets and funds of the association.

b. The amount of and method for reimbursing the expenses of board members.

c. Regular times and places for meetings of the board of directors.

d. Records to be kept relating to all financial transactions, and annual fiscal reporting to the commissioner.

e. Procedures for selecting the board of directors.

f. Additional provisions necessary or proper for the execution of the powers and duties of the association.

4. The plan of operation may provide that the powers and duties of the association may be delegated to a person who will perform functions similar to those of the association. A delegation under this section takes effect only upon the approval of the board of directors.

5. The association has the general powers and authority enumerated by this section and executed in accordance with the plan of operation approved by the commissioner under subsection 3. In addition, the association may do any of the following:

a. Enter into contracts as necessary or proper to administer this chapter.

b. Sue or be sued, including taking any legal action necessary or proper for recovery of any assessments for, on behalf of, or against members of the association or other participating persons.

c. Appoint from among members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the association, including the hiring of independent consultants as necessary.

d. Perform any other functions within the authority of the association.

6. Rates for basic and standard coverages as provided in this chapter shall be determined by each carrier or organized delivery system as the average of the lowest rate available for issuance by that carrier or organized delivery system adjusted for rating characteristics and benefits and the maximum rate allowable by law after adjustments for rate characteristics and benefits.

7. Following the close of each calendar year, the association, in conjunction with the commissioner, shall require each carrier or organized delivery system to report the amount of earned premiums and the associated paid losses for all basic and standard plans issued by the carrier or organized delivery system. The reporting of these amounts must be certified by an officer of the carrier or organized delivery system.

8. The board shall develop procedures and make assessments and distributions as required to equalize the individual carrier and organized delivery system gains or losses so that each carrier or organized delivery system receives the same ratio of paid claims to ninety percent of earned premiums as the aggregate of all basic and standard plans insured by all carriers and organized delivery systems in the state.

9. If the statewide aggregate ratio of paid claims to ninety percent of earned premiums is greater than one, the dollar difference between ninety percent of earned premiums and the paid claims shall represent an assessable loss.

10. The assessable loss plus necessary operating expenses for the association, plus any additional expenses as provided by law, shall be assessed by the association to all members in proportion to their respective shares of total health insurance premiums or payments for subscriber contracts received in Iowa during the second preceding calendar year, or with paid losses in the year, coinciding with or ending during the calendar year, or on any other equitable basis as provided in the plan of operation. In sharing losses, the association may abate or defer any part of the assessment of a member, if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. The association may also provide for an initial or interim assessment against the members of the association to meet the operating expenses of the association until the next calendar year is completed.

11. The board shall develop procedures for distributing the assessable loss assessments to each carrier and organized delivery system in proportion to the carrier's and organized delivery system's respective share of premium for basic and standard plans to the statewide total premium for all basic and standard plans.

12. The board shall ensure that procedures for collecting and distributing assessments are as efficient as possible for carriers and organized delivery systems. The board may establish procedures which combine, or offset, the assessment from, and the distribution due to, a carrier or organized delivery system.

13. A carrier or an organized delivery system may petition the association board to seek remedy from writing a significantly disproportionate share of basic and standard policies in relation to total premiums written in this state for health benefit plans. Upon a finding that a carrier or organized delivery system has written a disproportionate share, the board may agree to compensate the carrier or organized delivery system either by paying to the carrier or organized delivery system an additional fee not to exceed two percent of earned premiums from basic and standard policies for that carrier or organized

delivery system or by petitioning the commissioner or director, as appropriate, for remedy.

14. *a.* The commissioner, upon a finding that the acceptance of the offer of basic and standard coverage by individuals pursuant to this chapter would place the carrier in a financially impaired condition, shall not require the carrier to offer coverage or accept applications for any period of time the financial impairment is deemed to exist.

b. The director, upon a finding that the acceptance of the offer of basic and standard coverage by individuals pursuant to this chapter would place the organized delivery system in a financially impaired condition, shall not require the organized delivery system to offer coverage or accept applications for any period of time the financial impairment is deemed to exist.

95 Acts, ch 5, §12
NEW section

513C.11 Self-funded employer-sponsored health benefit plan participation in reinsurance association.

1. A self-funded employer-sponsored health benefit plan qualified under the federal Employee Retirement Income Security Act of 1974 may voluntarily elect to participate in the Iowa individual health benefit reinsurance association established in section 513C.10 in accordance with the plan of operation and subject to such terms and conditions adopted by the board of the association to provide portability and continuity to its covered employees and their covered spouses and dependents subject to the same terms and conditions as a participating insurer.

2. If the federal Employee Retirement Income Security Act of 1974 is amended such that the state may require the participation of a self-funded employer, the individual reinsurance requirements shall apply equally to such employers.

3. When and if the federal government imposes conditions of portability and continuity on self-funded employers qualified under the federal Employee Retirement Income Security Act of 1974 that the commissioner deems are substantially similar to those required of Iowa insurers, coverage under such qualified plans shall be deemed qualified prior coverage for purposes of chapter 513B and this chapter.

95 Acts, ch 5, §13
NEW section

CHAPTER 514

NONPROFIT HEALTH SERVICE CORPORATIONS

514.18 Podiatric physicians.

Medical or surgical services or procedures constituting the practice of podiatry, also known as chiropody, as defined by chapter 149, and covered by the terms of any individual, group, blanket, or franchise

policy providing accident or health benefits hereafter delivered or hereafter issued for delivery in Iowa and covering an Iowa risk may be performed by any practitioner, selected by the insured, licensed under chapter 149 to perform such medical or surgical

services or procedures. Any provision of such policy or exclusion or limitation denying an insured the free choice of such licensed podiatric physician, also known as chiroprapist, shall to the extent of the de-

nial, be void, but such voidance shall not affect the validity of the other provisions of the policy.

95 Acts, ch 108, §18
Section amended

CHAPTER 514B

HEALTH MAINTENANCE ORGANIZATIONS

514B.10 Charges.

Charges to enrollees may be established in accordance with actuarial principles for various categories of enrollees, but the charges shall not be determined according to the status of an individual enrollee's health or sex and shall not be excessive, inadequate, or unfairly discriminatory.

95 Acts, ch 185, §10
Section amended

514B.17 Cancellation of enrollees.

1. An enrollee enrolled in a prepaid individual plan shall not be canceled except for the failure to pay the charges permitted under section 514B.10 or for other reasons stated in the rules adopted by the commissioner and subject to review in accordance with chapter 17A. Except as provided in subsection 2 concerning prepaid group plans, notice of cancellation to an enrollee shall not be effective unless

delivered to the enrollee by the health maintenance organization in a manner prescribed by the commissioner and at least thirty days before the effective date of cancellation and unless accompanied by a statement of reason for cancellation. At any time before cancellation of the policy for nonpayment, the enrollee may pay to the health maintenance organization the full amount due, including court costs if any, and from the date of payment by the enrollee or the collection of the judgment, coverage shall revive and be in full force and effect.

2. The effect of cancellation of a prepaid group plan providing health care services to enrollees, and the duty to provide notice and liability for benefits, is the same as provided under section 509B.5, subsection 2, for the termination of accident or health insurance for employees or members.

95 Acts, ch 185, §11
Section amended

CHAPTER 514C

SPECIAL HEALTH AND ACCIDENT INSURANCE COVERAGES

514C.2 Skilled nursing care covered in hospitals.

An insurer, a hospital service corporation, or a medical service corporation, which covers the costs of skilled nursing care under an individual or group policy of accident and health insurance regulated under chapter 509 or 514A, a nonprofit hospital or medical and surgical service plan regulated under chapter 514, or a health care service contract regulated under chapter 514B, shall also cover the costs of skilled nursing care in a hospital if the level of care needed by the insured or subscriber has been reclassified from acute care to skilled nursing care and no designated skilled nursing care beds or swing beds are available in the hospital or in another hospital or health care facility within a thirty-mile radius of the hospital. The insurer or corporation shall reimburse the insured or subscriber based on the skilled nursing care rate.

95 Acts, ch 185, §12
Section amended

514C.3A Disclosures relating to dental coverage reimbursement rates.

1. An individual or group policy of accident or health insurance or individual or group hospital or health care service contract issued pursuant to chapter 509, 514, or 514A, and delivered, amended, or renewed on or after July 1, 1995, that provides dental care benefits with a base payment for those benefits determined upon a usual and customary fee charged by licensed dentists, shall disclose all of the following:

a. The frequency of the determination of the usual and customary fee.

b. A general description of the methodology used to determine usual and customary fees, including geographic considerations.

c. The percentile that determines the maximum benefit that the insurer or nonprofit health service corporation will pay for any dental procedure, if the usual and customary fee is determined by taking a sample of fees submitted on actual claims from licensed dentists and then determining the benefit by selecting a percentile of those fees.

2. The disclosure shall be provided upon request to all group and individual policyholders and subscribers. All proposals for dental care benefits shall inform the prospective policyholder or subscriber that information regarding usual and customary fee determinations is available from the insurer or non-profit health service corporation. All employee benefit descriptions or supplemental documents shall notify the employee that information regarding reimbursement rates is available from the employer.

95 Acts, ch 78, §1; 95 Acts, ch 209, §26

NEW section

Subsection 1, unnumbered paragraph 1 amended

514C.8 Coordination of health care benefits with state medical assistance.

1. An insurer, health maintenance organization, or hospital and medical service plan providing health care coverage to individuals in this state shall not consider the availability of or eligibility for medical assistance under Title XIX of the federal Social Security Act and chapter 249A, when determining eligibility of the individual for coverage or calculating payments to the individual under the health care coverage plan.

2. The state acquires the rights of an individual to payment from an insurer, health maintenance organization, or hospital or medical service plan to the extent payment for covered expenses is made pursuant to chapter 249A for health care items or services provided to the individual. Upon presentation of proof that payment was made pursuant to chapter 249A for covered expenses, the insurer, health maintenance organization, or hospital or medical service plan shall make payment to the state medical assistance program to the extent of the coverage provided in the policy or contract.

3. An insurer shall not impose requirements on the state with respect to the assignment of rights pursuant to this section that are different from the requirements applicable to an agent or assignee of a covered individual.

4. For purposes of this section, "insurer" means an entity which offers a health benefit plan, including a group health plan under the federal Employee Retirement Income Security Act of 1974.

95 Acts, ch 185, §13

NEW section

514C.9 Medical support — insurance requirements.

1. An insurer shall not deny coverage or enrollment of a child under the health plan of the obligor upon any of the following grounds:

a. The child is born out of wedlock.

b. The child is not claimed as a dependent on the obligor's federal income tax return.

c. The child does not reside with the obligor or in the insurer's service area. This section shall not be construed to require a health maintenance organization regulated under chapter 514B to provide any services or benefits for treatment outside of the geographic area described in its certificate of authority

which would not be provided to a member outside of that geographic area pursuant to the terms of the health maintenance organization's contract.

2. An insurer of an obligor providing health care coverage to the child for which the obligor is legally responsible to provide support shall do all of the following:

a. Provide information to the obligee or other legal custodian of the child as necessary for the child to obtain benefits through the coverage of the insurer.

b. Allow the obligee or other legal custodian of the child, or the provider with the approval of the obligee or other legal custodian of the child, to submit claims for covered services without the approval of the obligor.

c. Make payment on a claim submitted in paragraph "b" directly to the obligee or other legal custodian of the child, the provider, or the state medical assistance agency for claims submitted by the obligee or other legal custodian of the child, by the provider with the approval of the obligee or other legal custodian of the child, or by the state medical assistance agency.

3. If an obligor is required by a court order or administrative order to provide health coverage for a child and the obligor is eligible for dependent health coverage, the insurer shall do all of the following:

a. Allow the obligor to enroll under dependent coverage a child who is eligible for coverage pursuant to the applicable terms and conditions of the health benefit plan and the standard enrollment guidelines of the insurer without regard to an enrollment season restriction.

b. Enroll a child who is eligible for coverage under the applicable terms and conditions of the health benefit plan and the standard enrollment guidelines of the insurer, without regard to any time of enrollment restriction, under dependent coverage upon application by the obligee or other legal custodian of the child or by the department of human services in the event an obligor required by a court order or administrative order fails to apply for coverage for the child.

c. Maintain coverage and not cancel the child's enrollment unless the insurer obtains satisfactory written evidence of any of the following:

(1) The court order or administrative order is no longer in effect.

(2) The child is eligible for or will enroll in comparable health coverage through an insurer which shall take effect not later than the effective date of the cancellation of enrollment of the original coverage.

(3) The employer has eliminated dependent health coverage for its employees.

(4) The obligor is no longer paying the required premium because the employer no longer owes the obligor compensation, or because the obligor's employment has terminated and the obligor has not elected to continue coverage.

4. A group health plan shall establish reasonable procedures to determine whether a child is covered

under a qualified medical child support order issued pursuant to chapter 252E. The procedures shall be in writing, provide for prompt notice of each person specified in the medical child support order as eligible to receive benefits under the group health plan upon receipt by the plan of the medical child support order, and allow an obligee or other legal custodian of the child under chapter 252E to designate a representative for receipt of copies of notices in regard to the medical child support order that are sent to the obligee or other legal custodian of the child and the department of human services' child support recovery unit.

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

a. "Child" means a person, other than an obligee's spouse or former spouse, who is recognized under a qualified medical child support order as having a right to enrollment under a group health plan as the obligor's dependent.

b. "Court order" or "administrative order" means a ruling by a court or administrative agency in regard to the support an obligor shall provide to the obligor's child.

c. "Insurer" means an entity which offers a health benefit plan.

d. "Obligee" means an obligee as defined in section 252E.1.

e. "Obligor" means an obligor as defined in section 252E.1.

f. "Qualified medical child support order" means a child support order which creates or recognizes a child's right to receive health benefits for which the child is eligible under a group health benefit plan, describes or determines the type of coverage to be provided, specifies the length of time for which the order applies, and specifies the plan to which the order applies.

95 Acts, ch 185, §14
NEW section

514C.10 Coverage for adopted child.

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

a. "Child" means, with respect to an adoption or a placement for adoption of a child, an individual who

has not attained age eighteen as of the date of the issuance of a final adoption decree, or upon an interlocutory adoption decree becoming a final adoption decree, as provided in chapter 600, or as of the date of the placement for adoption.

b. "Placement for adoption" means the assumption and retention of a legal obligation for the total or partial support of the child in anticipation of the adoption of the child. The child's placement with a person terminates upon the termination of such legal obligation.

2. *Coverage required.* A policy or contract providing for third-party payment or prepayment of health or medical expenses shall provide coverage benefits to a dependent child adopted by, or placed for adoption with, an insured or enrollee under the same terms and conditions as apply to a biological, dependent child of the insured or enrollee. The issuer of the policy or contract shall not restrict coverage under the policy or contract for a dependent child adopted by, or placed for adoption with, the insured or enrollee solely on the basis of a preexisting condition of such dependent child at the time that the child would otherwise become eligible for coverage under the plan, if the adoption or placement occurs while the insured or enrollee is eligible for coverage under the policy or contract. This section applies to the following classes of third-party payment provider contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after July 1, 1995:

a. Individual or group accident and sickness insurance providing coverage on an expense-incurred basis.

b. An individual or group hospital or medical service contract issued pursuant to chapter 509, 514, or 514A.

c. An individual or group health maintenance organization contract regulated under chapter 514B.

d. An individual or group Medicare supplemental policy, unless coverage pursuant to such policy is preempted by federal law.

e. An organized delivery system licensed by the director of public health.

95 Acts, ch 185, §15
NEW section

CHAPTER 514G

LONG-TERM CARE INSURANCE

514G.7 Disclosure and performance standards for long-term care insurance.

1. *Rules.* The commissioner may adopt rules for full and fair disclosure of the terms and benefits of a long-term care insurance policy, including but not limited to rules setting forth the manner, content, and required disclosures for the sale of long-term

care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms.

2. *Prohibitions.* A long-term care insurance policy shall not:

a. Be cancelled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder.

b. Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder.

c. Provide coverage for skilled nursing care only, or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care.

d. Be issued to an individual without obtaining one or more of the following:

- (1) A report of a physical examination.
- (2) An assessment of functional capacity.
- (3) An attending physician's statement.
- (4) Copies of medical records.

3. *Preexisting conditions.*

a. A long-term care insurance policy or certificate shall not use a definition of preexisting condition which is more restrictive than the following: "*Preexisting condition*" means the existence of symptoms which would cause an ordinarily prudent person to seek diagnosis, care, or treatment, or a condition for which medical advice or treatment was recommended by or received from a provider of health care services within six months preceding the effective date of coverage of an insured person.

b. A long-term care insurance policy shall not exclude coverage for a loss or confinement which is the result of a preexisting condition unless the loss or confinement begins within six months following the effective date of coverage of an insured person.

c. The definition of "*preexisting condition*" does not prohibit either of the following:

(1) An insurer from using an application form designed to elicit the complete health history of an applicant.

(2) An insurer from underwriting in accordance with that insurer's established underwriting standards based on the answers on an application conforming with subparagraph (1).

4. *Prior hospitalization — institutionalization.*

a. Effective July 1, 1989, a long-term care insurance policy shall not be delivered or issued for delivery in this state if the policy does either of the following:

(1) Conditions eligibility for any benefits on a requirement of prior hospitalization.

(a) Effective July 1, 1991, any holder of a long-term care insurance policy, which is not noncancelable or guaranteed renewable, was issued before July 1, 1989, and conditions eligibility for benefits on a requirement of prior hospitalization, shall, unless it has previously been offered by the insurer, be offered by the insurer a rider or endorsement that waives the requirement of prior hospitalization. If the rider or endorsement results in a concomitant

increase in premium during the policy term, then it must be agreed to in writing and signed by the insured to become effective.

(b) The rider or endorsement under subparagraph subdivision (a) shall be subject to the insurer's underwriting guidelines as proof of insurability at the time of application for the rider or endorsement.

(c) Effective July 1, 1991, any holder of a noncancelable or guaranteed renewable long-term care insurance policy issued before July 1, 1989, which conditions eligibility for benefits on a requirement of prior hospitalization, shall, unless the holder has previously been notified by the insurer, be notified by the insurer in writing prior to or at the time of delivery of the next premium statement of the existence of the condition and that new policies issued by any insurance carrier may not condition benefits on a requirement of prior hospitalization. The insurer shall not solicit the replacement of the noncancelable or guaranteed renewable policy at the same time as the delivery of notice under this subparagraph subdivision.

(2) Conditions eligibility for benefits covering care provided in an institutional care setting on the receipt of a higher level of institutional care.

b. Effective July 1, 1989, a long-term care insurance policy containing any limitations or conditions for eligibility, other than those prohibited in paragraph 1, shall clearly label such limitations or conditions in a separate paragraph of the policy or certificate entitled "*Limitations or Conditions on Eligibility for Benefits*".

c. A long-term care insurance policy advertised, marketed, or offered as containing long-term care benefits at home shall not condition receipt of benefits on a requirement of prior hospitalization.

d. A long-term care insurance policy shall not condition eligibility for noninstitutional benefits on the prior receipt of institutional care.

5. *Rules.* The commissioner may adopt rules establishing loss ratio standards for long-term care insurance policies provided that a specific reference to long-term care insurance policies is contained in the rules.

6. *Right to return after examination.* An individual long-term care insurance policyholder has the right to return the policy within thirty days of its delivery and to have the premium refunded if, after examination, the insured person is not satisfied for any reason. Long-term care insurance policies must have a notice prominently printed on the first page or attached to the first page stating in substance that the policyholder has the right to return the policy within thirty days of its delivery and to have the premium refunded as provided in this subsection.

7. *Outline of coverage.* An outline of coverage shall be delivered to an applicant for an individual long-term care insurance policy at the time of application. An outline of coverage must include all of the following:

a. A description of the principal benefits and coverage provided in the policy.

b. A statement of the principal exclusions, reductions, and limitations contained in the policy.

c. A statement of the renewal provisions, including any reservation in the policy of a right to change premiums. Continuation or conversion provisions of group coverage shall be specifically described.

d. A statement that the outline of coverage is a summary of the policy issued or applied for, not a contract of insurance, and that the policy or group master policy should be consulted to determine governing contractual provisions.

e. A description of the terms by which the policy or certificate may be returned and premium refunded.

f. A description of the cost of care and benefits.

8. *Certificates.* A certificate issued pursuant to a group long-term care insurance policy which is

delivered or issued for delivery in this state shall include all of the following:

a. A description of the principal benefits and coverage provided in the policy.

b. A statement of the principal exclusions, reductions, and limitations contained in the policy.

c. A statement that the group master policy determines governing contractual provisions.

9. *Compliance required.* A policy shall not be advertised, marketed, or offered as long-term care or nursing home insurance unless it complies with this chapter.

95 Acts, ch 185, §16-18

Subsection 3, paragraphs a and b stricken and rewritten

Subsection 3, paragraph c stricken and former paragraph d relettered as c

Subsection 6 stricken and rewritten

CHAPTER 515

INSURANCE OTHER THAN LIFE

515.8 Paid-up capital required.

An insurance company other than a life insurance company shall not be incorporated to transact business upon the stock plan with less than two million five hundred thousand dollars capital, the entire amount of which shall be fully paid up in cash and invested as provided by law. An insurance company other than a life insurance company shall not increase its capital stock unless the amount of the increase is fully paid up in cash. The stock shall be divided into shares of not less than one dollar each. An insurance company authorized to do business in Iowa that undergoes a change of control as defined under chapter 521A shall maintain the minimum capital requirements mandated by this section.

95 Acts, ch 185, §19

Section amended

515.10 Surplus required.

An insurance company other than a life insurance company shall have, in addition to the required paid-up capital, a surplus in cash or invested in securities authorized by law of not less than two million five hundred thousand dollars. An insurance company authorized to do business in Iowa that undergoes a change of control as defined under chapter 521A shall maintain the minimum surplus requirements mandated by this section.

95 Acts, ch 185, §20

Section amended

515.12 Mutual companies — conditions.

No mutual company shall issue policies or transact any business of insurance unless it shall hold a certificate of authority from the commissioner of insurance authorizing the transaction of such business, which certificate of authority shall not be issued

until and unless the company shall comply with the following conditions:

1. It shall hold bona fide applications for insurance upon which it shall issue simultaneously, or it shall have in force, at least two hundred policies issued to at least two hundred members for the same kind of insurance upon not less than two hundred separate risks, each within the maximum single risk described herein; provided that not more than one hundred members shall be required for employer's liability and workers' compensation insurance.

2. The maximum single risk shall not exceed twenty percent of the admitted assets, or three times the average risk, or one percent of the insurance in force, whichever is the greater, any reinsurance taking effect simultaneously with the policy being deducted in determining such maximum single risk.

3. It shall have collected a premium upon each application, which premium shall be held in cash or securities in which insurance companies are authorized to invest, which shall be equal, in case of fire insurance, to not less than twice the maximum single risk assumed subject to one fire nor less than ten thousand dollars; and in any other kind of insurance, to not less than five times the maximum single risk assumed; and, in case of employer's liability and workers' compensation insurance, to not less than fifty thousand dollars.

4. For the purpose of transacting employer's liability and workers' compensation insurance, the applications shall cover not less than one thousand five hundred employees, each such employee being considered a separate risk for determining the maximum single risk.

5. The mutual company shall have in cash or in securities in which insurance companies are authorized to invest, surplus in an amount not less than

five million dollars. The surplus so required may be advanced in accordance with section 515.19. A mutual company authorized to do business in Iowa that undergoes a change of control as defined under chapter 521A shall maintain the minimum surplus requirements mandated by this section.

However, the surplus requirements do not apply to a company which establishes and maintains a guaranty fund as provided by section 515.20.

95 Acts, ch 185, §21
Subsection 5 amended

515.94 Copy of application — duty to provide.

All insurance companies or associations shall, upon the issue or renewal of any policy, provide to the insured, a true copy of any application or representation of the insured which, by the terms of such policy, is made a part of the policy, or of the contract of insurance, or referred to in the contract of insurance, or which may in any manner affect the validity of such policy.

95 Acts, ch 185, §22
Section amended

515.109 Forms of policies and endorsements — approval.

1. The form of all policies, and of applications, and of agreements or endorsements modifying the provisions of policies, and of all permits and riders used generally throughout the state, issued or proposed to be issued by any insurance company doing business in this state under the provisions of this chapter, shall first be examined and approved by the commissioner of insurance.

2. The commissioner, upon a determination that the examination required under subsection 1 is unnecessary to achieve the purposes of this section, may exempt either of the following:

a. Any specified person by order, or any class of persons by rule.

b. Any specified risk by order, or any line or kind of insurance or subdivision of insurance or any class of risk or combination of classes of risks by rule.

95 Acts, ch 185, §23
Section amended

CHAPTER 515A

WORKERS' COMPENSATION LIABILITY INSURANCE

515A.15 Assigned risks.

Agreements shall be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, the agreements and rate modifications to be subject to the approval of the commissioner.

For purposes of this section, "insurer" includes, in

addition to insurers defined pursuant to section 515A.2, a self-insurance association formed on or after July 1, 1995, pursuant to section 87.4 except for an association comprised of cities or counties, or both, or an association comprised of community colleges as defined in section 260C.2, which have entered into an agreement pursuant to chapter 28E for the purpose of establishing a self-insured program for the payment of workers' compensation benefits.

95 Acts, ch 185, §24
Section amended

CHAPTER 515C

MORTGAGE GUARANTY INSURANCE

515C.1 Definition.

"Mortgage guaranty insurance" means insurance against financial loss by reason of nonpayment of principal, interest and other sums agreed to be paid under the terms of any note or bond or other evidence

of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate or on an owner-occupied mobile home.

95 Acts, ch 67, §37
Section amended

CHAPTER 515F

CASUALTY INSURANCE

515F.5 Rate filings.

1. An insurer shall file with the commissioner, except as to inland marine risks which are not written according to manual rates or rating plans, every manual, minimum premium, class rate, rating schedule, rating plan, and every other rating rule, and every modification of any of the foregoing which it proposes to use. A filing shall state its proposed effective date, and shall indicate the character and extent of the coverage contemplated.

An insurer shall file or incorporate by reference to material which has been approved by the commissioner, at the same time as the filing of the rate, all supplementary rating and supporting information to be used in support of or in conjunction with a rate. The information furnished in support of a filing may include or consist of a reference to any of the following:

a. The experience or judgment of the insurer or rating information filed by the advisory organization on behalf of the insurer as permitted by section 515F.11.

b. An interpretation of any statistical data the insurer relies upon.

c. The experience of other insurers or rating advisory organizations.

d. Any other relevant factors. A filing and any supporting information shall be open to public inspection after the filing becomes effective.

When a filing is not accompanied by the information upon which the insurer supports the filing, the commissioner may require the insurer to furnish the supporting information and the waiting period commences on the date the information is furnished. Until the required information is furnished, the filing shall not be deemed complete or filed or available for use by the insurer. If the requested information is not furnished within a reasonable time period, the filing may be returned to the insurer as not filed and not available for use.

After reviewing an insurer's filing, the commissioner may require that the insurer's rates be based upon the insurer's own loss and expense information. If an insurer's loss or allocated loss adjustment expense information is not actuarially credible, as determined by the commissioner, the insurer may supplement its experience with information filed with the commissioner by an advisory organization.

Insurers using the services of an advisory organization shall, at the request of the commissioner, provide with a rate filing, a description of the rationale for that use, including its own information and method of using the advisory organization's information.

2. The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this chapter.

3. Subject to the exception in subsection 4, a filing shall be on file for a waiting period of thirty days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed fifteen days if written notice is given within the waiting period to the insurer or advisory organization which made the filing that additional time is needed for the consideration of the filing. Upon written application by the insurer, the commissioner may authorize a filing which has been reviewed to become effective before the expiration of the waiting period or an extension of the waiting period. A filing is deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or an extension of the waiting period.

4. Under rules adopted under chapter 17A, the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, or subdivision or combination of insurance, or as to classes of risks, which are unnecessary to achieve the purposes of this chapter and the rates for which cannot practicably be filed before they are used. The commissioner may make an examination as the commissioner deems advisable to ascertain whether rates affected by the order meet the standards set forth in section 515F.4.

5. Upon the written application of the insured stating the insured's reasons, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on a specific risk.

6. An insurer shall not make or issue a contract or policy except in accordance with the filings which have been approved and are in effect for the insurer as provided in this chapter. This subsection does not apply to contracts or policies for inland marine risks as to which filings are not required.

CHAPTER 518

COUNTY MUTUAL INSURANCE ASSOCIATIONS

518.14 Investments.

1. *General considerations.* The following considerations apply in the interpretation of this section:

a. This section applies to the investments of county mutual insurance associations.

b. The purpose of this section is to protect and further the interests of policyholders, claimants, creditors, and the public by providing standards for the development and administration of programs for the investment of the assets of associations organized under this chapter. These standards, and the investment programs developed by associations, shall take into account the safety of the association's principal, investment yield and growth, stability in the value of the investment, and liquidity necessary to meet the association's expected business needs, and investment diversification.

All investments made pursuant to this section shall have investment qualities and characteristics such that the speculative elements of the investments are not predominant.

c. Financial terms relating to county mutual insurance associations have the meanings assigned to them under statutory accounting methods. Financial terms relating to companies or associations other than county mutual insurance associations have the meanings assigned to them under generally accepted accounting principles.

d. Investments shall be valued in accordance with the valuation procedures established by the national association of insurance commissioners, unless the commissioner requires or finds another method of valuation reasonable under the circumstances.

e. If an investment qualifies under more than one subsection, an association may elect to hold the investment under the subsection of its choice. This section does not prevent an association from electing to hold an investment under a subsection different from the one under which it previously held the investment.

2. *Definitions.* For purposes of this section:

a. "*Admitted assets*", for purposes of computing percentage limitations on particular types of investments, means the assets which are authorized to be shown on the commissioner's annual statement blank as admitted assets as of the December 31 immediately preceding the date the association acquires the investment.

b. "*Clearing corporation*" means as defined in section 554.8102.

c. "*Custodian bank*" means as defined in section 554.8102.

d. "*Issuer*" means as defined in section 554.8201.

e. "*Member bank*" means a national bank, state bank, or trust company which is a member of the United States federal reserve system.

f. "*National securities exchange*" means an exchange registered under section 6 of the federal Se-

curities Exchange Act of 1934 or an exchange regulated under the laws of Canada.

g. "*Obligations*" includes bonds, notes, debentures, transportation equipment certificates, domestic repurchase agreements, and obligations for the payment of money not in default as to payments of principal and interest on the date of investment, which constitute general obligations of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment of principal and interest on the obligations. A lease is an obligation if the lease is assigned to the insurer and is nonterminable by the lessee upon foreclosure of any lien upon the leased property, and if rental payments are sufficient to amortize the investment over the primary lease term.

3. *Investments in name of association or nominee and prohibitions.*

a. An association's investments shall be held in its own name or the name of its nominee, except as follows:

(1) Investments may be held in the name of a clearing corporation or of a custodian bank or in the name of the nominee of either on the following conditions:

(a) The clearing corporation, custodian bank, or nominee must be legally authorized to hold the particular investment for the account of others.

(b) When the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee of a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart from other deposits with the depository, so that at all times they may be identified as belonging solely to the association making the deposit.

(c) If a clearing corporation is to act as depository, the investment may be merged or held in bulk in the name of the clearing corporation or its nominee with other investments deposited with the clearing corporation by any other person, if a written agreement between the clearing corporation and the association provides that adequate evidence of the deposit is to be obtained and retained by the association or a custodian bank.

(2) An association may loan stocks or obligations held by it under this chapter to a broker-dealer registered under the federal Securities Exchange Act of 1934 or to a member bank. The loan must be evidenced by a written agreement which provides all of the following:

(a) That the loan will be fully collateralized by cash or obligations issued or guaranteed by the United States or an agency or an instrumentality of the United States, and that the collateral will be adjusted as necessary each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

(b) That the loan may be terminated by the association at any time, and that the borrower will return the loaned stocks or obligations within five business days after termination.

(c) That the association has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement, and that the borrower remains liable for any losses and expenses incurred by the association due to default that are not covered by the collateral.

(3) An association may participate through a member bank in the United States federal reserve book entry system, and the records of the member bank shall at all times show that the investments are held for the association or for specific accounts of the association.

(4) An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the association, the name of the custodian bank, or the nominee of either, and, if the interest as evidenced by the certificate or confirmation is, if held by a custodian bank, kept separate and apart from the investments of others so that at all times the participation may be identified as belonging solely to the association making the investment.

(5) Transfers of ownership of investments held as described in paragraph "a", subparagraph (1), subparagraph subdivision (c), and subparagraphs (3) and (4), may be evidenced by bookkeeping entry on the books of the issuer of the investment, its transfer or recording agent, or the clearing corporation without physical delivery of a certificate evidencing the association's investment.

b. Except as provided in paragraph "a", subparagraph (5), if an investment is not evidenced by a certificate, adequate evidence of the association's investment shall be obtained from the issuer or its transfer or recording agent and retained by the association, a custodian bank, or clearing corporation. Adequate evidence, for purposes of this paragraph, means a written receipt or other verification issued by the depository or issuer or a custodian bank which shows that the investment is held for the association.

4. *Investments.* Except as otherwise permitted by this section, an association organized under this chapter shall only invest in the following:

a. *United States government obligations.* Obligations issued or guaranteed by the United States or an agency or instrumentality of the United States.

b. *Certain development bank obligations.* Obligations issued or guaranteed by the international bank for reconstruction and development, the Asian development bank, the inter-American development bank, the export-import bank, the world bank, or any United States government-sponsored organization of which the United States is a member, if the principal and interest is payable in United States dollars. An association shall not invest more than five percent of

its total admitted assets in the obligations of any one of these banks or organizations, and shall not invest more than a total of ten percent of its total admitted assets in the obligations authorized by this paragraph.

c. *State obligations.* Obligations issued or guaranteed by a state, a political subdivision of a state, or an instrumentality of a state.

d. *Canadian government obligations.* Obligations issued or guaranteed by Canada, by an agency or province of Canada, by a political subdivision of such province, or by an instrumentality of any of those provinces or political subdivisions.

e. *Corporate and business trust obligations.* Obligations issued, assumed, or guaranteed by a corporation or business trust organized under the laws of the United States or a state, or the laws of Canada or a province of Canada, provided that an association shall not invest more than five percent of its admitted assets in the obligations of any one corporation or business trust. Investments shall be made only in investment grade bonds.

f. *Stocks.* Common stocks, common stock equivalents, mutual fund shares, securities convertible into common stocks or common stock equivalents, or preferred stocks issued or guaranteed by a corporation incorporated under the laws of the United States or a state, or the laws of Canada or a province of Canada. Aggregate investments in nondividend paying stocks shall not exceed five percent of surplus.

(1) Stocks purchased under this lettered paragraph shall not exceed fifty percent of surplus. With the approval of the commissioner, an association may invest any amount in common stocks, preferred stocks, or other securities of one or more subsidiaries provided that after such investments the association's surplus as regards policyholders will be reasonable in relation to the association's outstanding liabilities and adequate to its financial needs.

(2) An association shall not invest more than ten percent of its surplus in the stocks of any one corporation.

g. *Home office real estate.* Funds may be invested in a home office building, at the direction of the board of directors and with the prior approval of the commissioner of insurance. An association shall not invest more than twenty-five percent of its total admitted assets in such real estate. With the prior approval of the commissioner, an association may exceed the real estate investment limitation to effectuate a merger with, or the acquisition of, another association.

95 Acts, ch 185, §26
Section stricken and rewritten

518.16 Qualification of agents.

A person shall not solicit any application for insurance for an association in this state without having procured from the commissioner of insurance a license authorizing the person to act as an agent pursuant to chapter 522.

95 Acts, ch 185, §27
Section stricken and rewritten

518.26 Loans to officers prohibited.

Assets or other funds shall not be loaned directly or indirectly to an officer, director, or employee of the association, or directly or indirectly to a relative of an officer, director, or an employee of the association.

95 Acts, ch 185, §28
NEW section

518.27 Form — approval.

The form of all policies, applications, agreements, and endorsements modifying the provisions of policies, and all permits and riders used in this state, issued or proposed to be issued by a county mutual insurance association doing business in this state under the provisions of this chapter, shall first be examined and approved by the commissioner of insurance.

95 Acts, ch 185, §29
NEW section

518.28 Failure to file copy.

Upon the failure of a county mutual association to file a copy of its forms of policies or contracts pursuant to section 518.27, the commissioner of insurance may suspend its authority to transact business within the state until such forms of policies or contracts have been filed and approved.

95 Acts, ch 185, §30
NEW section

518.29 Disapproval of filings.

If the commissioner finds that a filing does not meet the requirements of this chapter, written notice

of disapproval shall be sent to the county mutual insurance association specifying in what respect the filing fails to meet the requirements of this chapter and stating that the filing is not effective. If a filing is disapproved by the commissioner, the association may request a hearing on the disapproval within thirty days. The association bears the burden of proving compliance with the standards established by this chapter.

If, at any time after a form has been approved, the commissioner finds that the form no longer meets the requirements of this chapter, the commissioner may order the discontinuance of the use of the form. The order of discontinuance shall be in writing and may be issued only after a hearing with at least ten days' prior notice to all county mutuals affected by the order. The order shall state the grounds upon which the order is based and when the order of discontinuance is effective.

95 Acts, ch 185, §31
NEW section

518.30 Certificate suspension.

The commissioner of insurance may suspend a county mutual insurance association's certificate of authority to do business if the association neglects or fails to comply with this chapter.

95 Acts, ch 185, §32
NEW section

CHAPTER 518A

MUTUAL CASUALTY ASSESSMENT INSURANCE ASSOCIATIONS

518A.12 Investments.

1. *General considerations.* The following considerations apply in the interpretation of this section:

a. This section applies to the investments of mutual casualty assessment insurance associations.

b. The purpose of this section is to protect and further the interests of policyholders, claimants, creditors, and the public by providing standards for the development and administration of programs for the investment of the assets of associations organized under this chapter. These standards, and the investment programs developed by companies, shall take into account the safety of the association's principal, investment yield and growth, stability in the value of the investment, and liquidity necessary to meet the association's expected business needs, and investment diversification.

All investments made pursuant to this section shall have investment qualities and characteristics such that the speculative elements of the investments are not predominant.

c. Financial terms relating to mutual casualty assessment insurance associations have the meanings assigned to them under statutory accounting methods. Financial terms relating to companies other than mutual casualty assessment insurance associations have the meanings assigned to them under generally accepted accounting principles.

d. Investments shall be valued in accordance with the valuation procedures established by the national association of insurance commissioners, unless the commissioner requires or finds another method of valuation reasonable under the circumstances.

e. If an investment qualifies under more than one subsection, an association may elect to hold the investment under the subsection of its choice. This section does not prevent an association from electing to hold an investment under a subsection different from the one under which it previously held the investment.

2. *Definitions.* For purposes of this section:

a. "Admitted assets", for purposes of computing percentage limitations on particular types of investments, means the assets which are authorized to be shown on the national association of insurance commissioner's annual statement blank as admitted assets as of the December 31 immediately preceding the date the association acquires the investment.

b. "Clearing corporation" means as defined in section 554.8102.

c. "Custodian bank" means as defined in section 554.8102.

d. "Issuer" means as defined in section 554.8201.

e. "Member bank" means a national bank, state bank, or trust company which is a member of the United States federal reserve system.

f. "National securities exchange" means an exchange registered under section 6 of the federal Securities Exchange Act of 1934 or an exchange regulated under the laws of Canada.

g. "Obligations" includes bonds, notes, debentures, transportation equipment certificates, domestic repurchase agreements, and obligations for the payment of money not in default as to payments of principal and interest on the date of investment, which constitute general obligations of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment of principal and interest on the obligations. A lease is an obligation if the lease is assigned to the insurer and is nonterminable by the lessee upon foreclosure of any lien upon the leased property, and if rental payments are sufficient to amortize the investment over the primary lease term.

3. *Investments in name of association or nominee and prohibitions.*

a. An association's investments shall be held in its own name or the name of its nominee, except as follows:

(1) Investments may be held in the name of a clearing corporation or of a custodian bank or in the name of the nominee of either on the following conditions:

(a) The clearing corporation, custodian bank, or nominee must be legally authorized to hold the particular investment for the account of others.

(b) When the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee of a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart from other deposits with the depository, so that at all times they may be identified as belonging solely to the association making the deposit.

(c) If a clearing corporation is to act as depository, the investment may be merged or held in bulk in the name of the clearing corporation or its nominee with other investments deposited with the clearing corporation by any other person, if a written agreement between the clearing corporation and the association provides that adequate evidence of the deposit is to be obtained and retained by the association or a custodian bank.

(2) An association may loan stocks or obligations held by it under this chapter to a broker-dealer registered under the federal Securities Exchange Act of 1934 or to a member bank. The loan must be evidenced by a written agreement which provides all of the following:

(a) That the loan will be fully collateralized by cash or obligations issued or guaranteed by the United States or an agency or an instrumentality of the United States, and that the collateral will be adjusted as necessary each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

(b) That the loan may be terminated by the association at any time, and that the borrower will return the loaned stocks or obligations within five business days after termination.

(c) That the association has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement, and that the borrower remains liable for any losses and expenses incurred by the association due to default that are not covered by the collateral.

(3) An association may participate through a member bank in the United States federal reserve book entry system, and the records of the member bank shall at all times show that the investments are held for the association or for specific accounts of the association.

(4) An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the association, the name of the custodian bank, or the nominee of either, and, if the interest as evidenced by the certificate or confirmation is, if held by a custodian bank, kept separate and apart from the investments of others so that at all times the participation may be identified as belonging solely to the association making the investment.

(5) Transfers of ownership of investments held as described in paragraph "a", subparagraph (1), subparagraph subdivision (c), and subparagraphs (3) and (4), may be evidenced by bookkeeping entry on the books of the issuer of the investment, its transfer or recording agent, or the clearing corporation without physical delivery of a certificate evidencing the association's investment.

b. Except as provided in paragraph "a", subparagraph (5), if an investment is not evidenced by a certificate, adequate evidence of the association's investment shall be obtained from the issuer or its transfer or recording agent and retained by the association, a custodian bank, or clearing corporation. Adequate evidence, for purposes of this paragraph, means a written receipt or other verification issued by the depository or issuer or a custodian bank which shows that the investment is held for the association.

4. *Investments.* Except as otherwise permitted by this section, an association organized under this chapter shall only invest in the following:

a. *United States government obligations.* Obligations issued or guaranteed by the United States or an agency or instrumentality of the United States.

b. *Certain development bank obligations.* Obligations issued or guaranteed by the international bank for reconstruction and development, the Asian development bank, the inter-American development bank, the export-import bank, the world bank, or any United States government-sponsored organization of which the United States is a member, if the principal and interest is payable in United States dollars. An association shall not invest more than five percent of its total admitted assets in the obligations of any one of these banks or organizations, and shall not invest more than a total of ten percent of its total admitted assets in the obligations authorized by this paragraph.

c. *State obligations.* Obligations issued or guaranteed by a state, a political subdivision of a state, or an instrumentality of a state.

d. *Canadian government obligations.* Obligations issued or guaranteed by Canada, by an agency or province of Canada, by a political subdivision of such province, or by an instrumentality of any of those provinces or political subdivisions.

e. *Corporate and business trust obligations.* Obligations issued, assumed, or guaranteed by a corporation or business trust organized under the laws of the United States or a state, or the laws of Canada or a province of Canada, provided that an association shall not invest more than five percent of its admitted assets in the obligations of any one corporation or business trust. Investments shall be made only in investment grade bonds.

f. *Stocks.* Common stocks, common stock equivalents, mutual fund shares, securities convertible into common stocks or common stock equivalents, or preferred stocks issued or guaranteed by a corporation incorporated under the laws of the United States or a state, or the laws of Canada or a province of Canada. Aggregate investments in non-dividend paying stocks shall not exceed five percent of surplus.

(1) Stocks purchased under this lettered paragraph shall not exceed fifty percent of surplus. With the approval of the commissioner, an association may invest any amount in common stocks, preferred stocks, or other securities of one or more subsidiaries provided that after such investments the association's surplus as regards policyholders will be reasonable in relation to the association's outstanding liabilities and adequate to its financial needs.

(2) An association shall not invest more than ten percent of its surplus in the stocks of any one corporation.

g. *Home office real estate.* Funds may be invested in a home office building, at the direction of the board of directors and with the prior approval of the commissioner of insurance. An association shall not invest more than twenty-five percent of its total admitted

assets in such real estate. With the prior approval of the commissioner, an association may exceed the real estate investment limitation to effectuate a merger with, or the acquisition of, another association.

95 Acts, ch 185, §33

Section stricken and rewritten

518A.17 Hail assessments — payment of losses.

Associations engaged in writing hail insurance may, as concerns such insurance, provide in their bylaws and policies for a limited assessment in any one year.

The books of any association which relate to hail insurance business shall be closed and balanced as of the thirty-first day of December of each year, and the aggregate amount of assessments and other sums paid by the members during the year, and the aggregate amount of losses paid including those in the process of adjustment and/or litigation during the year, shall be ascertained.

Not less than fifty percent of such aggregate amount of assessments, and other sums paid by the members shall be returned to the members, either through the payment of losses or through discounts, credits, or dividends, to be credited on the assessments required for the current or succeeding year, or, at the discretion of the board of directors, may be set aside as surplus to policyholders, but no sum less than forty percent of such aggregate assessments, and other sums paid by the members, shall be returned to the members through payment of such losses or through discounts, credits, or dividends during the current or succeeding year.

In the event that losses sustained exceed a sum equal to fifty percent of such aggregate assessments and other sums paid by the members, such losses shall be paid from any emergency or surplus funds then in existence, and if the total funds available for the payment of losses is insufficient to pay such losses, such funds shall be prorated among the members sustaining such losses.

Such losses shall be due and payable on or before the twentieth day of January of the year succeeding that in which they occur, except such as may be then in dispute or litigation.

95 Acts, ch 185, §34

Unnumbered paragraph 3 amended

518A.33 Bonds of officers. Repealed by 95 Acts, ch 185, § 47.

518A.34 Additional security — noncompliance. Repealed by 95 Acts, ch 185, § 47.

518A.42 License — fee. Repealed by 95 Acts, ch 185, § 47.

518A.44 Limitation on risks.

An association shall not expose itself to loss on any one risk or hazard to an amount exceeding ten percent of its surplus to policyholders unless one of the following applies:

1. The excess is reinsured in some other good and reliable company licensed to sell insurance in this state.

2. The excess is reinsured by a group of incorporated or individual unincorporated insurers who are authorized to sell insurance in at least one state of the United States and who possess assets which are held in trust for the benefit of the American policyholders in the sum of not less than fifty million dollars, and a certificate of such reinsurance shall be furnished to the insured.

3. The excess is reinsured with a company which has, with respect to the ceding insurer, created a trust fund, made a deposit, or obtained letters of credit, on terms satisfactory to the commissioner.

95 Acts, ch 185, §35
NEW section

518A.45 through 518A.50 Reserved.

518A.51 Loans to officers prohibited.

Assets or other funds shall not be loaned directly or indirectly to an officer, director, or employee of the association, or directly or indirectly to a relative of an officer, director, or employee of the association.

95 Acts, ch 185, §36
NEW section

518A.52 Form — approval.

The form of all policies, applications, agreements, and endorsements modifying the provisions of policies, and all permits and riders used in this state, issued or proposed to be issued by a mutual casualty assessment insurance association doing business in this state under the provisions of this chapter, shall first be examined and approved by the commissioner of insurance.

95 Acts, ch 185, §37
NEW section

518A.53 Failure to file copy.

Upon the failure of a mutual casualty assessment insurance association to file a copy of its forms of

policies or contracts pursuant to section 518A.52, the commissioner of insurance may suspend its authority to transact business within the state until such forms of policies or contracts have been filed and approved.

95 Acts, ch 185, §38
NEW section

518A.54 Disapproval of filings.

If the commissioner finds that a filing does not meet the requirements of this chapter, written notice of disapproval shall be sent to the mutual casualty assessment insurance association specifying in what respect the filing fails to meet the requirements of this chapter and stating that the filing is not effective. If a filing is disapproved by the commissioner, the association may request a hearing on the disapproval within thirty days. The association bears the burden of proving compliance with the standards established by this chapter.

If, at any time after a form has been approved, the commissioner finds that the form no longer meets the requirements of this chapter, the commissioner may order the discontinuance of the use of the form. The order of discontinuance shall be in writing and may be issued only after a hearing with at least ten days' prior notice to all mutual casualty assessment insurance associations affected by the order. The order shall state the grounds upon which the order is based and when the order of discontinuance is effective.

95 Acts, ch 185, §39
NEW section

518A.55 Certificate suspension.

The commissioner of insurance may suspend a mutual casualty assessment insurance association's certificate of authority to do business if the association neglects or fails to comply with this chapter.

95 Acts, ch 185, §40
NEW section

CHAPTER 519

LIABILITY INSURANCE — CERTAIN PROFESSIONS

519.1 Authorization.

Any number of physicians and surgeons, osteopaths, osteopathic physicians and surgeons, podiatric physicians, chiropractors, pharmacists, dentists, and graduate nurses, licensed to practice their profession in this state, and hospitals licensed under chapter 135B, may, by complying with the provisions of this chapter and without regard to other statutory provisions, enter into contracts with each other for the purpose of protecting themselves by insurance

against loss by reason of actions at law on account of their alleged error, mistake, negligence, or carelessness in the treatment and care of patients, including the performance of surgical operations, or in the prescribing and dispensing of drugs and medicines, or for loss by reason of damages in other respects, and to reimburse any member in case of such loss.

95 Acts, ch 108, §19
Section amended

CHAPTER 519A

MEDICAL MALPRACTICE INSURANCE

519A.2 Definitions.

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

1. "Association" means the joint underwriting association established pursuant to this section and sections 519A.3 to 519A.13.

2. "Commissioner" means the commissioner of insurance or a designee.

3. "Licensed health care provider" means and includes a physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor or nurse licensed pursuant to chapter 147, and a hospital licensed pursuant to chapter 135B.

4. "Medical malpractice insurance" means insur-

ance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional service by any licensed health care provider.

5. "Net direct premiums" means gross direct premiums written on liability insurance as reported in the annual statements filed by the insurers with the commissioner, including the liability component of multiple peril package policies as computed by the commissioner, less return premiums for the unused or unabsorbed portions of premium deposits.

95 Acts, ch 108, §20
Subsection 3 amended

CHAPTER 521

CONSOLIDATION AND REINSURANCE

521.1 Definitions.

"Company" or "companies" when used in this chapter means a company or association organized under chapter 508, 511, 515, 518, 518A, or 520, and includes a mutual insurance holding company organized pursuant to section 521A.14.

95 Acts, ch 185, §41
Section amended

521.2 Life companies — consolidation and reinsurance.

A company organized under the laws of this state to do the business of life insurance, either on the stock, mutual, stipulated premium, or assessment plan, shall not consolidate with any other company or reinsure its risks, or any part of such risks, with any

other company, or assume or reinsure the whole or any part of the risks of any other company, except as provided in this chapter. However, this chapter shall not be construed to prevent any company, as defined in section 521.1, from reinsuring a fractional part of any single risk.

95 Acts, ch 185, §42
Section amended

521.16 Applicability of chapter.

Chapter 521A is applicable to a merger or consolidation made pursuant to this chapter, and the provisions of chapter 521A and this chapter shall apply exclusively with respect to such merger or consolidation.

95 Acts, ch 185, §43
NEW section

CHAPTER 521A

INSURANCE HOLDING COMPANY SYSTEMS

MUTUAL INSURANCE HOLDING COMPANIES

521A.14 Mutual insurance holding companies.

1. a. A domestic mutual insurance company, upon approval of the commissioner, may reorganize by forming an insurance holding company based upon a mutual plan and continuing the corporate existence of the reorganizing insurance company as a stock insurance company. The commissioner, after a public hearing as provided in section 521A.3, subsection 4, paragraph "b", if satisfied that the interests

of the policyholders are properly protected and that the plan of reorganization is fair and equitable to the policyholders, may approve the proposed plan of reorganization and may require as a condition of approval such modifications of the proposed plan of reorganization as the commissioner finds necessary for the protection of the policyholders' interests. The commissioner may retain consultants as provided in section 521A.3, subsection 4, paragraph "c". A reorganization pursuant to this section is subject to section 521A.3, subsections 1, 2, and 3. The commissioner shall retain jurisdiction over a mutual insurance hold-

ing company organized pursuant to this section to assure that policyholder interests are protected.

b. All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company.

2. a. A domestic mutual insurance company, upon the approval of the commissioner, may reorganize by merging its policyholders' membership interests into a mutual insurance holding company formed pursuant to subsection 1 and continuing the corporate existence of the reorganizing insurance company as a stock insurance company subsidiary of the mutual insurance holding company. The commissioner, after a public hearing as provided in section 521A.3, subsection 4, paragraph "b", if satisfied that the interests of the policyholders are properly protected and that the merger is fair and equitable to the policyholders, may approve the proposed merger and may require as a condition of approval such modifications of the proposed merger as the commissioner finds necessary for the protection of the policyholders' interests. The commissioner may retain consultants as provided in section 521A.3, subsection 4, paragraph "c". A merger pursuant to this section is subject to section 521A.3, subsections 1, 2, and 3. The commissioner shall retain jurisdiction over the mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.

b. All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company

shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company. A merger of policyholders' membership interests in a mutual insurance company into a mutual insurance holding company shall be deemed to be a merger of insurance companies pursuant to chapter 521 and chapter 521 is also applicable.

3. A mutual insurance holding company resulting from the reorganization of a domestic mutual insurance company organized under chapter 491 shall be incorporated pursuant to chapter 491. This requirement shall supersede any conflicting provisions of section 491.1. The articles of incorporation and any amendments to such articles of the mutual insurance holding company shall be subject to approval of the commissioner and the attorney general in the same manner as those of an insurance company.

4. A mutual insurance holding company is deemed to be an insurer subject to chapter 507C and shall automatically be a party to any proceeding under chapter 507C involving an insurance company which as a result of a reorganization pursuant to subsection 1 or 2 is a subsidiary of the mutual insurance holding company. In any proceeding under chapter 507C involving the reorganized insurance company, the assets of the mutual insurance holding company are deemed to be assets of the estate of the reorganized insurance company for purposes of satisfying the claims of the reorganized insurance company's policyholders. A mutual insurance holding company shall not dissolve or liquidate without the approval of the commissioner or as ordered by the district court pursuant to chapter 507C.

5. a. Chapters 508B and 515G are not applicable to a reorganization or merger pursuant to this section.

b. Chapter 508B is applicable to demutualization of a mutual insurance holding company which resulted from the reorganization of a domestic mutual life insurance company organized under chapter 508 as if it were a mutual life insurance company.

c. Chapter 515G is applicable to demutualization of a mutual insurance holding company which resulted from the reorganization of a domestic mutual property and casualty insurance company organized under chapter 515 as if it were a mutual property and casualty insurance company.

6. A membership interest in a domestic mutual insurance holding company shall not constitute a security as defined in section 502.102.

95 Acts, ch 185, §44, 48
NEW section

CHAPTER 521B

CREDIT FOR REINSURANCE

521B.2 Credit allowed a domestic ceding insurer.

Credit for reinsurance is allowed a domestic ceding insurer as either an asset or a deduction from liability

on account of reinsurance ceded only if the reinsurer meets the requirements of subsection 1, 2, 3, 4, or 5. If the reinsurer meets the requirements of subsection 3 or 4, the requirements of subsection 6 must also be met.

1. Credit is allowed if the reinsurance is ceded to an assuming insurer which is licensed to transact the business of reinsurance in this state.

2. Credit is allowed if the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer is one which satisfies all of the following conditions:

a. Files with the commissioner evidence of submission to the jurisdiction of this state.

b. Submits to the authority of this state to examine its books and records.

c. Is licensed to transact reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact the business of reinsurance in at least one state.

d. Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement and does either of the following:

(1) Maintains a surplus with respect to policyholders in an amount which is not less than twenty million dollars and whose accreditation has not been denied by the commissioner within ninety days of its submission to the jurisdiction of this state.

(2) Maintains a surplus with respect to policyholders in an amount less than twenty million dollars and whose accreditation has been approved by the commissioner. Credit shall not be allowed a domestic ceding insurer, if the accreditation of the assuming insurer is revoked by the commissioner after notice and hearing.

To qualify as an accredited reinsurer, an assuming insurer must meet all of the requirements and the standards set forth in this subsection. If the commissioner determines that the assuming insurer has failed to continue to meet any of these requirements or standards, the commissioner may upon written notice and hearing revoke accreditation of the assuming insurer.

This section does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

3. *a.* Credit is allowed if the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this section, and the assuming insurer or United States branch of an alien assuming insurer does both of the following:

(1) Maintains a surplus with respect to policyholders in an amount of not less than twenty million dollars.

(2) Submits to the authority of this state to examine its books and records.

b. However, the requirement of paragraph "a", subparagraph (1), does not apply to reinsurance ceded and assumed pursuant to a pooling arrange-

ment among insurers in the same holding company system.

4. *a.* Credit is allowed if the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in section 521B.4, subsection 2, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners' annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusted account representing the liabilities of the assuming insurer attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusted surplus of not less than twenty million dollars. In the case of a group including individual unincorporated and incorporated underwriters, the trust shall consist of a trusted account representing the liabilities of the group attributable to business written in the United States and, in addition, the group shall maintain a trusted surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group. The incorporated members of the group shall not engage in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

b. In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in paragraph "a", which is under the supervision of the department of trade and industry of the United Kingdom, which submits to the authority of this state to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of at least ten billion dollars, the trust shall be in an amount equal to the several liabilities of the group attributable to business written in the United States. The group shall also maintain a joint trustee surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group, and each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

c. Such trust shall be established in a form approved by the commissioner. The trust instrument shall provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust

vests legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner. The trust described in this paragraph must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

d. No later than February 28 of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the end of the preceding calendar year and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31.

5. Credit is allowed if the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection 1, 2, 3, or 4, but only with respect to the insurance of risks located in a jurisdiction where such reinsurance is required by applicable law or regulation of that jurisdiction. For purposes of this subsection, jurisdiction refers to a jurisdiction other than the United States, and any state, district, or territory of the United States. This subsection allows credit to ceding insurers which are mandated by such a jurisdiction to cede reinsurance to state owned or controlled insurance or reinsurance companies or to

participate in pools, guaranty funds, or joint underwriting associations.

6. a. If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsection 3 or 4 is not allowed unless the assuming insurer agrees in the reinsurance agreements to both of the following:

(1) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give such court jurisdiction, and shall abide by the final decision of such court or of any appellate court in the event of an appeal.

(2) That the commissioner or an attorney designated in the agreement is the true and lawful attorney of the assuming insurer upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

b. This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

95 Acts, ch 185, §45
Subsection 4, paragraph a amended

CHAPTER 523A

FUNERAL SERVICES AND MERCHANDISE

523A.1 Trust fund established — insurance.

1. Whenever an agreement is made by any person, firm, or corporation to furnish, upon the future death of a person named or implied in the agreement, funeral services or funeral merchandise, a minimum of eighty percent of all payments made under the agreement shall be and remain trust funds until occurrence of the death of the person for whose benefit the funds were paid, unless the funds are sooner released to the person making the payment by mutual consent of the parties. Payments otherwise subject to this section are not exempt merely because they are held in certificates of deposit. The commissioner may adopt rules to prohibit the commingling of trust funds with other funds of the seller.

Interest or income earned on amounts deposited in trust under this section shall remain in trust under the same terms and conditions as the payments made under the agreement, except that the seller may withdraw so much of the interest or income as represents the difference between the amount needed to adjust the trust funds for inflation as set by the commissioner based on the consumer price index and the interest or income earned during the preceding year not to exceed fifty percent of the total interest or

income, on a calendar year basis. The early withdrawal of interest or income pursuant to this provision does not affect the purchaser's right to the full refund or credit of such interest or income in the event the payments and interest in trust are released to the purchaser or in the event of a nonguaranteed price agreement, respectively. This provision does not affect the purchaser's right to a total refund of principal and interest or income in the event of nonperformance.

If an agreement pursuant to this section is to be paid in installment payments, the seller shall deposit eighty percent of each payment in trust until the full amount to be trusted has been deposited. If the agreement is financed with or sold to a financial institution, then the agreement shall be considered paid in full and the deposit requirements of this section shall be satisfied within fifteen days after the close of the month of receipt of the funds from the financial institution.

This section does not apply to payments for merchandise delivered to the purchaser. Except for caskets and other types of inner burial containers or concrete burial vaults sold after July 1, 1995, delivery includes storage in a warehouse under the control of

the seller or any other warehouse or storage facility approved by the commissioner when a receipt of ownership in the name of the purchaser is delivered to the purchaser, the merchandise is insured against loss, the merchandise is protected against damage, title has been transferred to the purchaser, the merchandise is appropriately identified and described in a manner that it can be distinguished from other similar items of merchandise, the method of storage allows for visual audits of the merchandise, and the annual reporting requirements of section 523A.2, subsection 1, are satisfied.

2. An agreement may be funded by insurance proceeds derived from a policy issued by an insurance company authorized to conduct business in this state. Such funding may be in lieu of a trust fund if the payments are made directly to the insurance company by the purchaser of the agreement.

95 Acts, ch 149, §1, 2
Unnumbered paragraphs 1 and 4 amended
Unnumbered paragraphs 1 through 4 numbered as subsection 1
NEW subsection 2

523A.2 Deposit of funds — records — examinations — reports.

1. *a.* All funds held in trust under section 523A.1 shall be deposited in a state or federally insured bank, savings and loan association, or credit union authorized to conduct business in this state, or trust department of such bank, savings and loan association, or credit union, or in a trust company authorized to conduct business in this state, within fifteen days after the close of the month of receipt of the funds and shall be held as provided in paragraph “g” for the designated beneficiary until released pursuant to section 523A.1.

b. The seller under an agreement referred to in section 523A.1 shall maintain accurate records of all receipts, expenditures, interest or earnings, and disbursements relating to funds held in trust, and shall make these records available to the commissioner for examination at any reasonable time upon request.

c. The seller under an agreement referred to in section 523A.1 shall file with the commissioner not later than March 1 of each year a report including the following information:

(1) The name and address of the seller and the name and address of the establishment that will provide the funeral services or funeral merchandise.

(2) The balance of each trust account as of the end of the preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any amounts withdrawn from trust and the reason for each withdrawal.

(3) A description of insurance funding outstanding at the end of the preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any insurance payments received by the seller.

(4) A complete inventory of funeral merchandise delivered in lieu of trusting pursuant to section 523A.1, including the location of the merchandise, serial numbers or warehouse receipt numbers, iden-

tified by the name of the purchaser or the beneficiary, and a verified statement of a certified public accountant that the certified public accountant has conducted a physical inventory of the funeral merchandise and that each item of that merchandise is in the seller's possession at the specified location. The statement shall be on a form prescribed by the commissioner.

(5) The name of the purchaser, beneficiary, and the amount of each agreement referred to in section 523A.1 made in the preceding year and the date on which it was made.

(6) Other information reasonably required by the commissioner for purposes of administration of this chapter.

The report shall be accompanied by a filing fee determined by the commissioner which shall be sufficient to defray the costs of administering this chapter.

d. A financial institution referred to in paragraph “a” shall file notice with the commissioner of all funds deposited under the trust agreement. The notice shall be on forms prescribed by the commissioner and shall be filed not later than March 1 of each year. Each notice shall contain the required information for all deposits made during the previous calendar year. Forms may be obtained from the commissioner.

e. Notwithstanding chapter 22, all records maintained by the commissioner under this subsection shall be confidential and shall not be made available for inspection or copying except upon approval of the commissioner or the attorney general.

f. The financial institution in which trust funds are held shall not be owned or under the control of the seller and shall not use any funds required to be held in trust pursuant to this chapter or chapter 566A to purchase an interest in any contract or agreement to which the seller is a party, or otherwise to invest, directly or indirectly, in the seller's business operations.

g. All funds required to be deposited for a purpose described in section 523A.1 shall be deposited in a manner consistent with one of the following:

(1) The payments will be deposited directly by the purchaser in an irrevocable interest-bearing burial account in the name of the purchaser.

(2) The payments will be deposited directly by the purchaser in a separate account in the name of the purchaser. The account may be made payable to the seller on the death of the purchaser or the designated beneficiary, provided that, until death, the purchaser retains the exclusive power to hold, manage, pledge, and invest the funds in the account and may revoke the trust and withdraw the funds, in whole or in part, at any time.

(3) The payments will be deposited by the purchaser or the seller in a separate burial trust account in the name of the purchaser, as trustee, in trust for the named beneficiary, to be held, invested, and administered as a trust account for the benefit and protection of the person for whose benefit the funds were paid. The depositor shall notify the financial

institution of the existence and terms of the trust, including at a minimum the name of each party to the agreement, the name and address of the trustee, and the name and address of the beneficiary. The account may be made payable to the seller upon the death of the designated beneficiary.

(4) The payments will be deposited in the name of the trustee, as trustee, under the terms of a master trust agreement and the trustee may invest, reinvest, exchange, retain, sell, and otherwise manage the trust fund for the benefit and protection of the person for whose benefit the funds were paid.

In addition to the methods provided for above, the commissioner may by rule authorize other methods of deposit upon a finding that the other method provides equivalent safety of the principal and interest or income and the seller does not have the ability to utilize any of the proceeds prior to performance. Moneys deposited under the master trust agreement may be commingled for investment purposes as long as each deposit includes a detailed listing of the amount deposited in trust for each beneficiary and a separate accounting of each purchaser's principal, interest, and income is maintained. Subject to the master trust agreement, the seller may appoint an independent investment advisor to act in an advisory capacity with the trustee relative to the investment of the trust funds. The trust shall pay the cost of the operation of the trust and any annual audit fees.

The financial institution, or the trust department of the financial institution in which trust funds are held, may serve as trustee to the extent the institution or department has been granted those powers under the laws of this state or the United States. The seller or any officer, director, agent, employee, or affiliate of the seller shall not serve as trustee.

2. In addition to complying with subsection 1, each seller under an agreement referred to in section 523A.1 shall file annually with the commissioner an authorization for the commissioner or a designee to investigate, audit, and verify all funds, accounts, safe-deposit boxes, and other evidence of trust funds held by or in a financial institution.

3. The commissioner shall adopt rules under chapter 17A specifying the form, content, and cost of the forms for the notices and disclosures required by this section, and shall sell blank forms at that cost to any person on request.

4. If a seller under an agreement referred to in section 523A.1 ceases to do business, whether voluntarily or involuntarily, and the obligation to provide the merchandise and services has not been assumed by another funeral home or cemetery holding an establishment permit issued under this chapter, all funds held in trust under section 523A.1, including accrued interest or earnings, shall be repaid to the purchaser under the agreement.

5. The commissioner may require the performance of an audit of the seller's business by a certified public accountant if the commissioner receives reasonable evidence that the seller is not complying

with this chapter. The audit shall be paid for by the seller, and a copy of the report of audit shall be delivered to the commissioner and to the seller.

6. A seller or financial institution that knowingly fails to comply with any requirement of this section or that knowingly submits false information in a document or notice required by this section commits a serious misdemeanor.

7. This chapter does not prohibit the funding of an agreement by insurance proceeds derived from a policy issued by an insurance company authorized to conduct business in this state. The seller of an agreement subject to this chapter which is to be funded by insurance proceeds shall obtain all permits required to be obtained under this chapter and comply with the reporting requirements of this section.

95 Acts, ch 149, §3, 4
Subsection 1, paragraphs a and c amended
Subsection 7 amended

523A.8 Disclosures.

1. Every agreement for funeral merchandise or funeral services under this chapter shall be written in clear, understandable language and shall be printed or typed in easy-to-read type, size, and style, and shall:

a. Identify the seller, the salesperson's permit and establishment name and permit number, the expiration date of the salesperson's permit, the purchaser, and the person for whom the funeral services or funeral merchandise are purchased if other than the purchaser.

b. Specify the funeral services or funeral merchandise, or both, to be provided, and the cost of each service and merchandise item.

c. State clearly the conditions on which substitution will be allowed.

d. Set forth the total purchase price and the terms under which it is to be paid.

e. State clearly whether the agreement is a guaranteed price contract or a nonguaranteed price contract. Each nonguaranteed price contract shall contain in twelve point bold type, an explanation of the consequences in substantially the following language:

THE PRICES OF MERCHANDISE AND SERVICES UNDER THIS AGREEMENT ARE SUBJECT TO CHANGE IN THE FUTURE. ANY FUNDS PAID UNDER THIS CONTRACT ARE ONLY A DEPOSIT TO BE APPLIED, TOGETHER WITH ACCRUED INCOME, TOWARD THE FINAL COSTS OF THE MERCHANDISE OR SERVICES CONTRACTED FOR. ADDITIONAL CHARGES MAY BE REQUIRED.

f. State clearly whether the agreement is a revocable or irrevocable contract, and who has the authority to revoke the contract.

g. State the amount or percentage of money to be placed in trust.

h. Explain the disposition of the income generated from investments, include a statement of fees, expenses, and taxes which may be deducted, and

include a statement of the buyer's responsibility for income taxes owed on the income, if applicable.

i. Specify the purchaser's right to cancel and damages for cancellation, if any.

j. Include an explanation of regulatory oversight by the insurance division in twelve point bold type, in substantially the following language:

THIS CONTRACT MUST BE REPORTED TO THE IOWA INSURANCE DIVISION BY THE FIRST DAY OF MARCH OF THE FOLLOWING YEAR. YOU MAY CALL THE INSURANCE DIVISION AT (INSERT TELEPHONE NUMBER) TO CONFIRM THAT YOUR CONTRACT HAS BEEN REPORTED. WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE FOLLOWING ADDRESS: IOWA SECURITIES BUREAU, (INSERT ADDRESS).

k. State that after all payments are made in accordance with the conditions and terms of the agreement for funeral merchandise or funeral services, any funds remaining in an irrevocable burial trust fund from which the costs of funeral merchandise and funeral services are paid shall be returned to the estate of the deceased individual for purposes of probate pursuant to chapter 633 or if the estate is not subject to probate and if the deceased was a recipient of medical assistance and a debt is due the department of human services pursuant to section 249A.5, the remaining funds shall be available for payment of the debt.

2. The commissioner may adopt rules establishing disclosure and format requirements to promote consumers' understanding of the merchandise and services purchased and the available funding mechanisms under an agreement pursuant to this chapter.

3. Every agreement shall be signed by the purchaser, the seller, and if the agreement is for funeral services as defined in chapter 156, a person licensed to deliver those services.

4. The seller shall disclose at the time an application is made by an individual and prior to accepting the applicant's initial premium or deposit for a preneed funeral contract or prearrangement subject to section 523A.1 which is funded by a life insurance policy, the following information:

a. That a life insurance policy is involved or being used to fund an agreement.

b. The nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise or services, the administrator, and any other person.

c. The relationship of the life insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement.

d. The impact on the prearrangement of the following:

(1) Changes in the life insurance policy including, but not limited to, changes in the assignment, beneficiary designation, or use of proceeds.

(2) Any penalties to be incurred by the policyholder as a result of the failure to make premium payments.

(3) Penalties to be incurred or cash to be received as a result of the cancellation or surrender of the life insurance policy.

e. A list of merchandise and services which are applied or contracted for in the prearrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need.

f. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the agreement.

g. Any penalties or restrictions, including but not limited to, geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services, or the prearrangement guarantee.

h. That a sales commission or other form of compensation is being paid and, if so, the identity of the individuals or entities to whom it is paid.

95 Acts, ch 68, §4; 95 Acts, ch 149, §5-7

Subsection 1, paragraphs e, h and j amended

Subsection 1, NEW paragraph k

NEW subsection 2 and former subsection 2 renumbered as 3

NEW subsection 4

523A.20 Insurance division's regulatory fund.

The insurance division may authorize the creation of a special revenue fund in the state treasury, to be known as the insurance division regulatory fund. The commissioner shall allocate annually from the fees paid pursuant to section 523A.2, two dollars for each agreement reported on an establishment permit holder's annual report for deposit to the regulatory fund. The remainder of the fees collected pursuant to section 523A.2 shall be deposited into the general fund of the state. In addition, on May 1 of 1996 and 1997, the commissioner, to the extent necessary to fund consumer education, audits, investigations, payments under contract with licensed establishments to provide funeral merchandise or services in the event of statutory noncompliance by the initial seller, liquidations, and receiverships, shall assess establishment permit holders two dollars for each agreement reported on the establishment permit holder's annual report of sales executed during the preceding year, which shall be deposited in the insurance division regulatory fund. The moneys in the regulatory fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay auditors, audit expenses, investigative expenses, and the expenses of receiverships established pursuant to section 523A.19. An annual assessment shall not be imposed if the current balance of the fund exceeds two hundred thousand dollars.

95 Acts, ch 149, §8

Section amended

523A.21 License revocation — recommendation by commissioner to board of mortuary science examiners.

Upon a determination by the commissioner that grounds exist for an administrative license revocation or suspension action by the board of mortuary science examiners under chapter 156, the commissioner may forward to the board the grounds for the determination, including all evidence in the possession of the commissioner, so that the board may proceed with the matter as deemed appropriate.

95 Acts, ch 149, §9
NEW section

523A.22 Liquidation.

1. *Grounds for liquidation.* Upon receipt of a written request from the board of mortuary science examiners, the commissioner may petition the district court for an order directing the commissioner to liquidate a funeral establishment on any of the following grounds:

a. The funeral establishment did not deposit funds pursuant to section 523A.1 or withdrew funds in a manner inconsistent with this chapter and is insolvent.

b. The funeral establishment did not deposit funds pursuant to section 523A.1 or withdrew funds in a manner inconsistent with this chapter and the condition of the funeral establishment is such that the further transaction of business would be hazardous, financially or otherwise, to its preneed funeral customers or the public.

2. *Liquidation order.*

a. An order to liquidate the business of a funeral establishment shall appoint the commissioner as liquidator and shall direct the liquidator to immediately take possession of the assets of the funeral establishment and to administer them under the general supervision of the court. The liquidator is vested with the title to the property, contracts, and rights of action and the books and records of the funeral establishment ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of court and the recorder of deeds of the county in which its principal office or place of business is located, or, in the case of real estate with the recorder of deeds of the county where the property is located, is notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the recorder of deeds.

b. Upon issuance of an order, the rights and liabilities of a funeral establishment and of the funeral establishment's creditors, preneed and at-need funeral customers, owners, and other persons interested in the funeral establishment's estate shall become fixed as of the date of the entry of the order of liquidation, except as provided in subsection 14.

c. At the time of petitioning for an order of liquidation, or at any time after the time of petitioning, the commissioner, after making appropriate findings of a funeral establishment's insolvency, may petition the court for a declaration of insolvency. After pro-

viding notice and hearing as it deems proper, the court may make the declaration.

d. An order issued under this section shall require accounting to the court by the liquidator. Accountings, at a minimum, must include all funds received or disbursed by the liquidator during the current period. An accounting shall be filed within one year of the liquidation order and at such other times as the court may require.

e. Within five days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the funeral establishment's obligations during the pendency of an appeal. The plan shall provide for the continued performance of preneed and at-need funeral contracts in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. If the defendant funeral establishment's financial condition, in the judgment of the commissioner, will not support the full performance of all obligations during the appeal pendency period, the plan may prefer the claims of certain at-need and preneed funeral customers and claimants over creditors and interested parties as well as other at-need and preneed funeral customers and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such at-need and preneed funeral customers and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. An action shall not lie against the commissioner or any of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

3. *Powers of liquidator.*

a. The liquidator may do any of the following:

(1) Appoint a special deputy to act for the liquidator under this chapter, and determine the special deputy's reasonable compensation. The special deputy shall have all the powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(2) Hire employees and agents, legal counsel, accountants, appraisers, consultants, and other personnel as the commissioner may deem necessary to assist in the liquidation.

(3) With the approval of the court, fix reasonable compensation of employees and agents, legal counsel, accountants, appraisers, and consultants.

(4) Pay reasonable compensation to persons appointed and defray from the funds or assets of the funeral establishment all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the funeral establishment. If the property of the funeral establishment does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out

of the insurance division regulatory fund. Amounts so advanced for expenses of administration shall be repaid to the insurance division regulatory fund for the use of the division out of the first available moneys of the funeral establishment.

(5) Hold hearings, subpoena witnesses, and compel their attendance, administer oaths, examine a person under oath, and compel a person to subscribe to the person's testimony after it has been correctly reduced to writing, and in connection to the proceedings require the production of books, papers, records, or other documents which the liquidator deems relevant to the inquiry.

(6) Collect debts and moneys due and claims belonging to the funeral establishment, wherever located. Pursuant to this subparagraph, the liquidator may do any of the following:

(a) Institute timely action in other jurisdictions to forestall garnishment and attachment proceedings against debts.

(b) Perform acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions as the liquidator deems best.

(c) Pursue any creditor's remedies available to enforce claims.

(7) Conduct public and private sales of the property of the funeral establishment.

(8) Use assets of the funeral establishment under a liquidation order to transfer obligations of preneed funeral contracts to a solvent funeral establishment, if the transfer can be accomplished without prejudice to applicable priorities under subsection 18.

(9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with property of the funeral establishment at its market value or upon terms and conditions as are fair and reasonable. The liquidator shall also have power to execute, acknowledge, and deliver deeds, assignments, releases, and other instruments necessary to effectuate a sale of property or other transaction in connection with the liquidation.

(10) Borrow money on the security of the funeral establishment's assets or without security and execute and deliver documents necessary to that transaction for the purpose of facilitating the liquidation. Money borrowed pursuant to this subparagraph shall be repaid as an administrative expense and shall have priority over any other class 1 claims under the priority of distribution established in subsection 18.

(11) Enter into contracts as necessary to carry out the order to liquidate and affirm or disavow contracts to which the funeral establishment is a party.

(12) Continue to prosecute and to institute in the name of the funeral establishment or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the liquidator deems unprofitable to pursue further.

(13) Prosecute an action on behalf of the creditors, at-need funeral customers, preneed funeral customers, or owners against an officer of the funeral establishment or any other person.

(14) Remove records and property of the funeral establishment to the offices of the commissioner or to other places as may be convenient for the purposes of efficient and orderly execution of the liquidation.

(15) Deposit in one or more banks in this state sums as are required for meeting current administration expenses and distributions.

(16) Unless the court orders otherwise, invest funds not currently needed.

(17) File necessary documents for recording in the office of a recorder of deeds or record office in this state or elsewhere where property of the funeral establishment is located.

(18) Assert defenses available to the funeral establishment as against third persons including statutes of limitations, statutes of fraud, and the defense of usury. A waiver of a defense by the funeral establishment after a petition in liquidation has been filed shall not bind the liquidator.

(19) Exercise and enforce the rights, remedies, and powers of a creditor, at-need funeral customer, preneed funeral customer, or owner, including the power to avoid transfer or lien that may be given by the general law and that is not included within subsections 7 through 9.

(20) Intervene in a proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

(21) Exercise powers now held or later conferred upon receivers by the laws of this state which are not inconsistent with this chapter.

b. This subsection does not limit the liquidator or exclude the liquidator from exercising a power not listed in paragraph "a" that may be necessary or appropriate to accomplish the purposes of this chapter.

4. Notice to creditors and others.

a. Unless the court otherwise directs, the liquidator shall give notice of the liquidation order as soon as possible by doing all of the following:

(1) By first-class mail to all persons known or reasonably expected to have claims against the funeral establishment, including at-need and preneed funeral customers, by mailing a notice to their last known address as indicated by the records of the funeral establishment.

(2) By publication in a newspaper of general circulation in the county in which the funeral establishment has its principal place of business and in other locations as the liquidator deems appropriate.

b. Notice to potential claimants under paragraph "a" shall require claimants to file with the liquidator their claims together with proper proofs of the claim under subsection 13 on or before a date the liquidator shall specify in the notice. Claimants shall keep the liquidator informed of their changes of address, if any.

c. If notice is given pursuant to this section, the distribution of assets of the funeral establishment

under this chapter shall be conclusive with respect to claimants, whether or not a claimant actually received notice.

5. *Actions by and against liquidator.*

a. After the issuance of an order appointing a liquidator of a funeral establishment, an action at law or equity shall not be brought against the funeral establishment in this state or elsewhere, and existing actions shall not be maintained or further presented after issuance of the order. Whenever in the liquidator's judgment, protection of the estate of the funeral establishment necessitates intervention in an action against the funeral establishment that is pending outside this state, the liquidator may intervene in the action. The liquidator may defend, at the expense of the estate of the funeral establishment, an action in which the liquidator intervenes under this section.

b. Within two years or such additional time as applicable law may permit, the liquidator, after the issuance of an order for liquidation, may institute an action or proceeding on behalf of the estate of the funeral establishment upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which the order is entered. If a period of limitation is fixed by agreement for instituting a suit or proceeding upon a claim, or for filing a claim, proof of claim, proof of loss, demand, notice, or the like, or if in a proceeding, judicial or otherwise, a period of limitation is fixed in the proceeding or pursuant to applicable law for taking an action, filing a claim or pleading, or doing an act, and if the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any action or do any act, required of or permitted to the funeral establishment, within a period of one hundred eighty days subsequent to the entry of an order for liquidation, or within a further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

c. A statute of limitation or defense of laches shall not run with respect to an action against a funeral establishment between the filing of a petition for liquidation against the funeral establishment and the denial of the petition. An action against the funeral establishment that might have been commenced when the petition was filed may be commenced for at least sixty days after the petition is denied.

6. *Collection and list of assets.*

a. As soon as practicable after the liquidation order but not later than one hundred twenty days after such order, the liquidator shall prepare in duplicate a list of the funeral establishment's assets. The list shall be amended or supplemented as the liquidator may determine. One copy shall be filed in the office of the clerk of court and one copy shall be retained for the liquidator's files. Amendments and supplements shall be similarly filed.

b. The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

c. A submission to the court for distribution of assets in accordance with subsection 11 fulfills the requirements of paragraph "a".

7. *Fraudulent transfers prior to petition.*

a. A transfer made and an obligation incurred by a funeral establishment within one year prior to the filing of a successful petition for liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A fraudulent transfer made or an obligation incurred by a funeral establishment ordered to be liquidated under this chapter may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value. A purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee under subsection 9, paragraph "c".

(2) A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the funeral establishment could not obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained a lien or persons who might have become bona fide purchasers.

8. *Fraudulent transfer after petition.*

a. After a petition for liquidation has been filed a transfer of real property of the funeral establishment made to a person acting in good faith is valid against the liquidator if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred. The commencement of a proceeding in liquidation is constructive notice upon the recording of a copy of the petition for or order of liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or a state or jurisdiction to authorize a judicial sale of real property of the funeral establishment within a county in a state shall not be impaired by the pendency of a

proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

b. After a petition for liquidation has been filed and before either the receiver takes possession of the property of the funeral establishment or an order of liquidation is granted:

(1) A transfer of the property, other than real property, of the funeral establishment made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred.

(2) If acting in good faith, a person indebted to the funeral establishment or holding property of the funeral establishment may pay the debt or deliver the property, or any part of the property, to the funeral establishment or upon the funeral establishment's order as if the petition were not pending.

(3) A person having actual knowledge of the pending liquidation is not acting in good faith.

(4) A person asserting the validity of a transfer under this subsection has the burden of proof. Except as provided in this subsection, a transfer by or on behalf of the funeral establishment after the date of the petition for liquidation by any person other than the liquidator is not valid against the liquidator.

c. A person receiving any property from the funeral establishment or any benefit of the property of the funeral establishment which is a fraudulent transfer under paragraph "a" is personally liable for the property or benefit and shall account to the liquidator.

d. This chapter does not impair the negotiability of currency or negotiable instruments.

9. *Voidable preferences and liens.*

a. (1) A preference is a transfer of the property of a funeral establishment to or for the benefit of a creditor for an antecedent debt made or suffered by the funeral establishment within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the funeral establishment is already subject to a receivership, then the transfers are preferences if made or suffered within one year before the filing of the successful petition for the receivership, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(2) A preference may be avoided by the liquidator if any of the following exist:

(a) The funeral establishment was insolvent at the time of the transfer.

(b) The transfer was made within four months before the filing of the petition.

(c) At the time the transfer was made, the creditor receiving it or to be benefited by the transfer or the creditor's agent acting with reference to the

transfer had reasonable cause to believe that the funeral establishment was insolvent or was about to become insolvent.

(d) The creditor receiving the transfer was an officer, or an employee, attorney, or other person who was in fact in a position of comparable influence in the funeral establishment to an officer whether or not the person held the position of an officer, owner, or other person, firm, corporation, association, or aggregation of persons with whom the funeral establishment did not deal at arm's length.

(3) Where the preference is voidable, the liquidator may recover the property. If the property has been converted, the liquidator may recover its value from a person who has received or converted the property. However, if a bona fide purchaser or lienor has given less than fair equivalent value, the purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given. Where a preference by way of lien or security interest is voidable, the court may on due notice order the lien or security interest to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee.

(2) A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the funeral establishment could not obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

c. (1) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(2) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of paragraph "b", if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by a step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. However, a lien could not become superior

and a purchase could not create superior rights for the purpose of paragraph "b" through an act subsequent to the obtaining of a lien or subsequent to a purchase which requires the agreement or concurrence of any third party or which requires further judicial action or ruling.

d. A transfer of property for or on account of a new and contemporaneous consideration, which is under paragraph "b" made or suffered after the transfer because of delay in perfecting it, does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or a bona fide purchaser's rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

e. If a lien voidable under paragraph "a", subparagraph (2), has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer or the creation of a lien upon property of a funeral establishment before the filing of a petition under this chapter which results in a liquidation order, the indemnifying transfer or lien is also voidable.

f. The property affected by a lien voidable under paragraphs "a" and "e" is discharged from the lien. The property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator. However, the court may on due notice order a lien to be preserved for the benefit of the estate and the court may direct that the conveyance be executed to evidence the title of the liquidator.

g. The court shall have summary jurisdiction of a proceeding by the liquidator to hear and determine the rights of the parties under this section. Reasonable notice of hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, upon application of any party in interest, the court shall in the same proceeding ascertain the value of the property or lien. If the value is less than the amount for which the property is indemnified or less than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within the time as fixed by the court.

h. The liability of a surety under a releasing bond or other like obligation is discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator. Where the property is retained under paragraph "g", the liability of the surety is discharged to the extent of the amount paid to the liquidator.

i. If a creditor has been preferred for property which becomes a part of the funeral establishment's

estate, and afterward in good faith gives the funeral establishment further credit without security of any kind, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from the creditor.

j. If within four months before the filing of a successful petition for liquidation under this chapter, or at any time in contemplation of a proceeding to liquidate, a funeral establishment, directly or indirectly, pays money or transfers property to an attorney for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator. The payment or transfer shall be held valid only to the extent of a reasonable amount to be determined by the court. The excess may be recovered by the liquidator for the benefit of the estate. However, where the attorney is in a position of influence in the funeral establishment or an affiliate, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered shall be governed by the provision of paragraph "a", subparagraph (2), subparagraph subdivision (d).

k. (1) An officer, manager, employee, shareholder, subscriber, attorney, or any other person acting on behalf of the funeral establishment who knowingly participates in giving any preference when the person has reasonable cause to believe the funeral establishment is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. There is an inference that reasonable cause exists if the transfer was made within four months before the date of filing of this successful petition for liquidation.

(2) A person receiving property from the funeral establishment or the benefit of the property of the funeral establishment as a preference voidable under paragraph "a" is personally liable for the property and shall account to the liquidator.

(3) This subsection shall not prejudice any other claim by the liquidator against any person.

10. *Claims of holder of void or voidable rights.*

a. A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance, voidable under this chapter, shall not be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within thirty days from the date of the entering of the final judgment. However, the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

b. A claim allowable under paragraph "a" by reason of a voluntary or involuntary avoidance, preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing

under subsection 12, if filed within thirty days from the date of the avoidance or within the further time allowed by the court under paragraph "a".

11. *Liquidator's proposal to distribute assets.*

a. From time to time as assets become available, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshaled assets.

b. The proposal shall at least include provisions for all of the following:

(1) Reserving amounts for the payment of all the following:

(a) Expenses of administration.

(b) To the extent of the value of the security held, the payment of claims of secured creditors.

(c) Claims falling within the priorities established in subsection 18, paragraphs "a" and "b".

(2) Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available.

c. Action on the application may be taken by the court provided that the liquidator's proposal complies with paragraph "b".

12. *Filing of claims.*

a. Proof of all claims shall be filed with the liquidator in the form required by subsection 13 on or before the last day for filing specified in the notice required under subsection 4.

b. The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if the claimant were not late, to the extent that the payment will not prejudice the orderly administration of the liquidation under any of the following circumstances:

(1) The existence of the claim was not known to the claimant and that the claimant filed the claim as promptly as reasonably possible after learning of it.

(2) A transfer to a creditor was avoided under subsections 7 through 9, or was voluntarily surrendered under subsection 10, and that the filing satisfies the conditions of subsection 10.

(3) The valuation under subsection 17 of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation.

c. The liquidator may consider any claim filed late and permit the claimant to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive at each distribution the same percentage of the amount allowed on the claim as is then being paid to claimants of any lower priority. This shall continue until the claim has been paid in full.

13. *Proof of claim.*

a. Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

(1) The particulars of the claim, including the consideration given for it.

(2) The identity and amount of the security on the claim.

(3) The payments, if any, made on the debt.

(4) A statement that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim.

(5) Any right of priority of payment or other specific right asserted by the claimant.

(6) A copy of the written instrument which is the foundation of the claim.

(7) The name and address of the claimant and the attorney who represents the claimant, if any.

b. A claim need not be considered or allowed if it does not contain all the information identified in paragraph "a" which is applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

c. At any time the liquidator may request the claimant to present information or evidence supplementary to that required under paragraph "a", and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

d. A judgment or order against a funeral establishment entered after the date of filing of a successful petition for liquidation, or a judgment or order against the funeral establishment entered at any time by default or by collusion need not be considered as evidence of liability or of the amount of damages. A judgment or order against a funeral establishment before the filing of the petition need not be considered as evidence of liability or of the amount of damages.

14. *Special claims.*

a. A claim may be allowed even if contingent, if it is filed pursuant to subsection 12. The claim may be allowed and the claimant may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

b. Claims that are due except for the passage of time shall be treated as absolute claims are treated. However, the claims may be discounted at the legal rate of interest.

c. Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of an order of liquidation under subsection 2.

15. *Disputed claims.*

a. If a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or the claimant's attorney by first-class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file objections with the liquidator. Unless a filing is made, the claimant shall not further object to the determination.

b. If objections are filed with the liquidator and the liquidator does not alter the denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first-class mail to the claim-

ant or the claimant's attorney and to any other persons directly affected. The notice shall be given not less than ten nor more than thirty days before the date of the hearing. The matter shall be heard by the court or by a court-appointed referee. The referee shall submit findings of fact along with a recommendation.

16. *Claims of other person.* If a creditor, whose claim against a funeral establishment is secured in whole or in part by the undertaking of another person, fails to prove and file that claim, then the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name to the extent that the other person discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person is not entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the funeral establishment's estate to the creditor equal the amount of the entire claim of the creditor. An excess received by the creditor shall be held by the creditor in trust for the other person.

17. *Secured creditor's claims.*

a. The value of security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

(1) By converting the security into money according to the terms of the agreement pursuant to which the security was delivered to the creditors.

(2) By agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

b. The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount so determined shall be credited upon the secured claim. A deficiency shall be treated as an unsecured claim. If the claimant surrenders the security to the liquidator, the entire claim shall be allowed as if unsecured.

18. *Priority of distribution.* The priority of distribution of claims from the funeral establishment's estate shall be in accordance with the order in which each class of claims is set forth. Claims in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. Subclasses shall not be established within a class. The order of distribution of claims is as follows:

a. *Class 1.* The costs and expenses of administration, including but not limited to the following:

(1) The actual and necessary costs of preserving or recovering the assets of the funeral establishment.

(2) Compensation for all authorized services rendered in the liquidation.

(3) Necessary filing fees.

(4) The fees and mileage payable to witnesses.

(5) Authorized reasonable attorney's fees and other professional services rendered in the liquidation.

b. *Class 2.* Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation

and represent payment for services performed within one year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. The priority is in lieu of other similar priority which may be authorized by law as to wages or compensation of employees.

c. *Class 3.* Claims under at-need and preneed funeral contracts.

d. *Class 4.* Claims of general creditors.

e. *Class 5.* Claims of the federal or any state or local government. Claims, including those of a governmental body for a penalty or forfeiture, are allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs incurred. The remainder of such claims shall be postponed to the class of claims under paragraph "g".

f. *Class 6.* Claims filed late or any other claims other than claims under paragraph "g".

g. *Class 7.* The claims of shareholders or other owners.

19. *Liquidator's recommendations to the court.*

a. The liquidator shall review claims duly filed in the liquidation and shall make further investigation as necessary. The liquidator may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by a person or organization. Unresolved disputes shall be determined under subsection 15. As soon as practicable, the liquidator shall present to the court a report of the claims against the funeral establishment with the liquidator's recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended.

b. The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within sixty days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to subsection 15. A claim under a policy of insurance shall not be allowed for an amount in excess of the applicable policy limits.

20. *Distribution of assets.* Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

21. *Unclaimed and withheld funds.*

a. Unclaimed funds subject to distribution remaining in the liquidator's hands when the liquidator is ready to apply to the court for discharge, including the amount distributable to a creditor, owner, or other person who is unknown or cannot be

found, shall be deposited with the treasurer of state, and shall be paid without interest, except as provided in subsection 18, to the person entitled or the person's legal representative upon proof satisfactory to the treasurer of state of the right to the funds. An amount on deposit not claimed within six years from the discharge of the liquidator is deemed to have been abandoned and shall become the property of the state without formal escheat proceedings and be transferred to the insurance division regulatory fund.

b. Funds withheld under subsection 14 and not distributed shall upon discharge of the liquidator be deposited with the treasurer of state and paid pursuant to subsection 18. Sums remaining which under subsection 18 would revert to the undistributed assets of the funeral establishment shall be transferred to the insurance division regulatory fund and become the property of the state as provided under paragraph "a", unless the commissioner in the commissioner's discretion petitions the court to reopen the liquidation pursuant to subsection 23.

c. Notwithstanding any other provision of this chapter, funds as identified in paragraph "a", with the approval of the court, shall be made available to the commissioner for use in the detection and prevention of future insolvencies. The commissioner shall hold these funds in the insurance division regulatory fund and shall pay without interest, except as provided in subsection 18, to the person entitled to the funds or the person's legal representative upon proof satisfactory to the commissioner of the person's right to the funds. The funds shall be held by the commissioner for a period of two years at which time the rights and duties to the unclaimed funds shall vest in the commissioner.

22. *Termination of proceedings.*

a. When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer remaining funds that are uneconomical to distribute, as appropriate.

b. Any other person may apply to the court at any time for an order under paragraph "a". If the appli-

cation is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

23. *Reopening liquidation.* At any time after the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may petition the court to reopen the proceedings for good cause including the discovery of additional assets. The court shall order the proceeding reopened if it is satisfied that there is justification for the reopening.

24. *Disposition of records during and after termination of liquidation.* If it appears to the commissioner that the records of a funeral establishment in process of liquidation or completely liquidated are no longer useful, the commissioner may recommend to the court and the court shall direct what records shall be retained for future reference and what records shall be destroyed.

25. *External audit of receiver's books.* The court may order audits to be made of the books of the commissioner relating to a receivership established under this chapter, and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of an audit shall be considered a cost of administration of the receivership.

95 Acts, ch 149, §10
NEW section

523A.23 Minimum fidelity bond or insurance policy.

The seller, in connection with an offer or sale of an agreement referred to in section 523A.1, shall obtain and maintain at all times a fidelity bond or insurance policy covering losses resulting from dishonest or fraudulent acts committed by employees of the seller which cause a loss, theft, or misappropriation of cash, property, or a negotiable instrument submitted to the seller pursuant to the agreement. The fidelity bond or insurance policy must be maintained in an amount not less than fifty thousand dollars.

95 Acts, ch 149, §11
NEW section

CHAPTER 523E

CEMETERY MERCHANDISE

523E.1 Trust fund established — insurance.

1. If an agreement is made by a person to furnish, upon the future death of a person named or implied in the agreement, cemetery merchandise, a minimum of one hundred twenty-five percent of the wholesale cost of the cemetery merchandise, based upon the current advertised prices available from a manufacturer or wholesaler who has delivered the same or substantially the same type of merchandise

to the seller during the last twelve months, shall be and remain trust funds until purchase of the merchandise or the occurrence of the death of the person for whose benefit the funds were paid, unless the funds are sooner released to the person making the payment by mutual consent of the parties. Payments otherwise subject to this section are not exempt merely because they are held in certificates of deposit. The commissioner may adopt rules to prohibit

the commingling of trust funds with other funds of the seller.

2. The seller shall keep copies of all price advertisements upon which the seller relies to determine the wholesale cost. The copies of price advertisements so maintained shall be made available to the commissioner upon request. The seller shall review wholesale costs no less than annually and make additional deposits as necessary to assure that the amount held in trust is always equal to or in excess of one hundred twenty-five percent of the wholesale cost of the merchandise. The seller and the manufacturer or wholesaler upon whose price the seller relies to determine the wholesale cost shall not be commonly owned or affiliated.

3. Interest or income earned on amounts deposited in trust under this subsection shall remain in trust under the same terms and conditions as the payments made under the agreement and purchasers shall have a right to a total refund of principal and interest or income in the event of nonperformance.

4. If an agreement subject to this subsection is to be paid in installment payments, the seller shall deposit fifty percent of each payment in trust until the full amount to be trusted has been deposited. If the agreement is financed with or sold to a financial institution, the agreement shall be considered paid in full and the deposit requirements of this section shall be satisfied within fifteen days after the close of the month of receipt of the funds from the financial institution.

5. An agreement may be funded by insurance proceeds derived from a policy issued by an insurance company authorized to conduct business in this state. Such funding may be in lieu of a trust fund if the payments are made directly to the insurance company by the purchaser of the agreement.

6. This section does not apply to payments for merchandise delivered to the purchaser. Delivery includes storage in a warehouse under the control of the seller or any other warehouse or storage facility approved by the commissioner when a receipt of ownership in the name of the purchaser is delivered to the purchaser, the merchandise is insured against loss, the merchandise is protected against damage, title has been transferred to the purchaser, the merchandise is appropriately identified and described in a manner that it can be distinguished from other similar items of merchandise unless this identification requirement with respect to bronze merchandise is waived by the commissioner by rule, the method of storage allows for visual audits of the merchandise, and the annual reporting requirements of section 523E.2, subsection 1, are satisfied.

95 Acts, ch 149, §12, 13
Subsection 1 amended
NEW subsection 5

Unnumbered paragraph 1 (last paragraph) numbered as subsection 6

523E.2 Deposit of funds — records — examinations — reports.

1. *a.* All funds held in trust under section 523E.1 shall be deposited in a state or federally insured

bank, savings and loan association, or credit union authorized to conduct business in this state, or trust department of such bank, savings and loan association, or credit union, or in a trust company authorized to conduct business in this state, within fifteen days after the close of the month of receipt of the funds and shall be held as provided in paragraph "g" for the designated beneficiary until released pursuant to section 523E.1.

b. The seller under an agreement referred to in section 523E.1 shall maintain accurate records of all receipts, expenditures, interest or earnings, and disbursements relating to funds held in trust, and shall make these records available to the commissioner for examination at any reasonable time upon request.

c. The seller under an agreement referred to in section 523E.1 shall file with the commissioner not later than March 1 of each year a report including the following information:

(1) The name and address of the seller and the name and address of the establishment that will provide the cemetery merchandise.

(2) The balance of each trust account as of the end of the immediately preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any amounts withdrawn from trust and the reason for each withdrawal.

(3) A description of insurance funding outstanding at the end of the immediately preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any insurance payments received by the seller.

(4) A complete inventory of cemetery merchandise delivered in lieu of trusting pursuant to section 523E.1, including the location of the merchandise, serial numbers or warehouse receipt numbers, identified by the name of the purchaser or the beneficiary, and a verified statement of a certified public accountant that the certified public accountant has conducted a physical inventory of the cemetery merchandise and that each item of that merchandise is in the seller's possession at the specified location. The statement shall be on a form prescribed by the commissioner.

(5) The name of the purchaser, beneficiary, and the amount of each agreement referred to in section 523E.1 made in the preceding year and the date on which it was made.

(6) Other information reasonably required by the commissioner for purposes of administration of this chapter.

The report shall be accompanied by a filing fee determined by the commissioner which shall be sufficient to defray the costs of administering this chapter.

d. A financial institution referred to in paragraph "a" shall file notice with the commissioner of all funds deposited under the trust agreement. The notice shall be on forms prescribed by the commissioner and shall be filed not later than March 1 of each year. Each notice shall contain the required information for all deposits made during the previous calendar year. Forms may be obtained from the commissioner.

e. Notwithstanding chapter 22, all records maintained by the commissioner under this subsection shall be confidential and shall not be made available for inspection or copying except upon approval of the commissioner or the attorney general.

f. The financial institution in which trust funds are held shall not be owned or under the control of the seller and shall not use any funds required to be held in trust pursuant to this chapter or chapter 566A to purchase an interest in any contract or agreement to which the seller is a party, or otherwise to invest, directly or indirectly, in the seller's business operations.

g. All funds required to be deposited for a purpose described in section 523E.1 shall be deposited in a manner consistent with one of the following:

(1) The payments shall be deposited directly by the purchaser in an irrevocable interest-bearing burial account in the name of the purchaser.

(2) The payments shall be deposited directly by the purchaser in a separate account in the name of the purchaser. The account may be made payable to the seller on the death of the purchaser or the designated beneficiary, provided that, until death, the purchaser retains the exclusive power to hold, manage, pledge, and invest the funds in the account and may revoke the trust and withdraw the funds, in whole or in part, at any time.

(3) The payments shall be deposited by the purchaser or the seller in a separate burial trust account in the name of the purchaser, as trustee, in trust for the named beneficiary, to be held, invested, and administered as a trust account for the benefit and protection of the person for whose benefit the funds were paid. The depositor shall notify the financial institution of the existence and terms of the trust, including at a minimum the name of each party to the agreement, the name and address of the trustee, and the name and address of the beneficiary. The account may be made payable to the seller upon death of the designated beneficiary.

(4) The payments shall be deposited in the name of the trustee, as trustee, under the terms of a master trust agreement and the trustee may invest, reinvest, exchange, retain, sell, and otherwise manage the trust fund for the benefit and protection of the person for whose benefit the funds were paid.

In addition to the methods provided for in this section, the commissioner may by rule authorize other methods of deposit upon a finding that that method provides equivalent safety of the principal and interest or income and the seller does not have the ability to utilize any of the proceeds prior to performance. Money deposited under the master trust agreement may be commingled for investment purposes as long as each deposit includes a detailed listing of the amount deposited in trust for each beneficiary and a separate accounting of each purchaser's principal, interest, and income is maintained. Subject to the master trust agreement, the seller may appoint an independent investment advisor to act in an advisory capacity with the trustee

relative to the investment of the trust funds. The trust shall pay the cost of the operation of the trust and any annual audit fees.

The financial institution, or the trust department of the financial institution, in which trust funds are held may serve as trustee to the extent that the organization has been granted those powers under the laws of this state or the United States. The seller or any officer, director, agent, employee, or affiliate of the seller shall not serve as trustee.

2. In addition to complying with subsection 1, each seller under an agreement referred to in section 523E.1 shall file annually with the commissioner an authorization for the commissioner or a designee to investigate, audit, and verify all funds, accounts, safe-deposit boxes, and other evidence of trust funds held by or in a financial institution.

3. The commissioner shall adopt rules under chapter 17A specifying the form, content, and cost of the forms for the notices and disclosures required by this section, and shall sell blank forms at that cost to any person on request.

4. If a seller under an agreement referred to in section 523E.1 ceases to do business, whether voluntarily or involuntarily, and the obligation to provide the merchandise and services has not been assumed by another funeral home or cemetery holding an establishment permit issued under this chapter, all funds held in trust under section 523E.1, including accrued interest or earnings, shall be repaid to the purchaser under the agreement.

5. The commissioner may require the performance of an audit of the seller's business by a certified public accountant if the commissioner receives reasonable evidence that the seller is not complying with this chapter. The audit shall be paid for by the seller, and a copy of the report of audit shall be delivered to the commissioner and to the seller.

6. This chapter does not prohibit the funding of an agreement by insurance proceeds derived from a policy issued by an insurance company authorized to conduct business in this state. The seller of an agreement subject to this chapter which is to be funded by insurance proceeds shall obtain all permits required to be obtained under this chapter and comply with the reporting requirements of this section.

95 Acts, ch 149, §14, 15

Subsection 1, paragraphs a and c amended

Subsection 6 amended

523E.8 Disclosures.

1. Every agreement for cemetery merchandise under this chapter shall be written in clear, understandable language and shall be printed or typed in easy-to-read type, size, and style, and shall:

a. Identify the seller, the salesperson's permit and establishment name and permit number, the expiration date of the salesperson's permit, the purchaser, and the person for whom the cemetery merchandise is purchased if other than the purchaser.

b. Specify the cemetery merchandise to be provided, and the cost of each merchandise item.

c. State clearly the conditions on which substitution will be allowed.

d. Set forth the total purchase price and the terms under which it is to be paid.

e. State clearly whether the agreement is a guaranteed price contract or a nonguaranteed price contract. Each nonguaranteed price contract shall contain in twelve point bold type, an explanation of the consequences in substantially the following language:

THE PRICES OF MERCHANDISE AND SERVICES UNDER THIS CONTRACT ARE SUBJECT TO CHANGE IN THE FUTURE. ANY FUNDS PAID UNDER THIS CONTRACT ARE ONLY A DEPOSIT TO BE APPLIED, TOGETHER WITH ACCRUED INCOME, TOWARD THE FINAL COSTS OF THE MERCHANDISE OR SERVICES CONTRACTED FOR. ADDITIONAL CHARGES MAY BE REQUIRED.

f. State clearly whether the agreement is a revocable or irrevocable contract, and who has the authority to revoke the contract.

g. State the amount or percentage of money to be placed in trust.

h. Explain the disposition of the income generated from investments, include a statement of fees, expenses, and taxes which may be deducted, and include a statement of the buyer's responsibility for income taxes owed on the income, if applicable.

i. Specify the purchaser's right to cancel and damages for cancellation, if any.

j. Include an explanation of regulatory oversight by the insurance division in twelve point bold type, in substantially the following language:

THIS CONTRACT MUST BE REPORTED TO THE IOWA INSURANCE DIVISION BY THE FIRST DAY OF MARCH OF THE FOLLOWING YEAR. YOU MAY CALL THE INSURANCE DIVISION AT (INSERT TELEPHONE NUMBER) TO CONFIRM THAT YOUR CONTRACT HAS BEEN REPORTED. WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE FOLLOWING ADDRESS: IOWA SECURITIES BUREAU (INSERT ADDRESS).

k. State that after all payments are made in accordance with the conditions and terms of the agreement for cemetery merchandise; any funds remaining in an irrevocable burial trust fund from which cemetery merchandise costs are paid shall be returned to the estate of the deceased individual for purposes of probate pursuant to chapter 633 or if the estate is not subject to probate and if the deceased was a recipient of medical assistance and a debt is due the department of human services pursuant to section 249A.5, the remaining funds shall be available for payment of the debt.

2. The commissioner may adopt rules establishing disclosure and format requirements to promote

consumers' understanding of the cemetery merchandise purchased and the available funding mechanisms under an agreement for cemetery merchandise under this chapter.

3. Every agreement shall be signed by the purchaser and the seller.

4. The seller shall disclose at the time an application is made by an individual and prior to accepting the applicant's initial premium or deposit for a preneed funeral contract or prearrangement subject to section 523E.1 which is funded by a life insurance policy, the following information:

a. That a life insurance policy is involved or being used to fund an agreement.

b. The nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise or services, the administrator, and any other person.

c. The relationship of the life insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement.

d. The impact on the prearrangement of the following:

(1) Changes in the life insurance policy including, but not limited to, changes in the assignment, beneficiary designation, or use of proceeds.

(2) Any penalties to be incurred by the policyholder as a result of the failure to make premium payments.

(3) Penalties to be incurred or cash to be received as a result of the cancellation or surrender of the life insurance policy.

e. A list of merchandise and services which are applied or contracted for in the prearrangement and all relevant information concerning the price of the merchandise and services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need.

f. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the agreement.

g. Any penalties or restrictions, including but not limited to, geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services, or the prearrangement guarantee.

h. That a sales commission or other form of compensation is being paid and, if so, the identity of the individuals or entities to whom it is paid.

95 Acts, ch 68, §5; 95 Acts, ch 149, §16-18
 Subsection 1, paragraphs e, h, and j amended
 Subsection 1, NEW paragraph k
 NEW subsection 2 and former subsection 2 renumbered as 3
 NEW subsection 4

523E.20 Insurance division's regulatory fund.

The insurance division may authorize the creation of a special revenue fund in the state treasury, to be known as the insurance division regulatory fund. The

commissioner shall allocate annually from the fees paid pursuant to section 523E.2, two dollars for each agreement reported on an establishment permit holder's annual report for deposit to the regulatory fund. The remainder of the fees collected pursuant to section 523E.2 shall be deposited into the general fund of the state. In addition, on May 1 of 1996 and 1997, the commissioner, to the extent necessary to fund consumer education, audits, investigations, payments under contract with licensed establishments to provide funeral and cemetery merchandise or services in the event of statutory noncompliance by the initial seller, liquidations, and receiverships, shall assess establishment permit holders two dollars for each agreement reported on the establishment permit holder's annual report of sales executed during the preceding year, which shall be deposited in the insurance division regulatory fund. The moneys in the regulatory fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay auditors, audit expenses, investigative expenses, and the expenses of receiverships established pursuant to section 523E.19. An annual assessment shall not be imposed if the current balance of the fund exceeds two hundred thousand dollars.

95 Acts, ch 149, §19
Section amended

523E.21 License revocation — recommendation by commissioner to board of mortuary science examiners.

Upon a determination by the commissioner that grounds exist for an administrative license revocation action by the board of mortuary science examiners under chapter 156, the commissioner may forward to the board the grounds for the determination, including all evidence in the possession of the commissioner, so that the board may proceed with the matter as deemed appropriate.

95 Acts, ch 149, §20
NEW section

523E.22 Minimum fidelity bond or insurance policy.

The seller, in connection with an offer or sale of an agreement referred to in section 523E.1, shall obtain and maintain at all times a fidelity bond or insurance policy covering losses resulting from dishonest or fraudulent acts committed by employees of the seller which cause a loss, theft, or misappropriation of cash, property, or a negotiable instrument submitted to the seller pursuant to the agreement. The fidelity bond or insurance policy must be maintained in an amount not less than fifty thousand dollars.

95 Acts, ch 149, §21
NEW section

CHAPTER 523H

FRANCHISES

523H.2 Applicability.

This chapter applies to a new or existing franchise that is operated in the state of Iowa. For purposes of this chapter, the franchise is operated in this state only if the premises from which the franchise is operated is physically located in this state. For purposes of this chapter, a franchise including marketing rights in or to this state, is deemed to be operated in this state only if the franchisee's principal business office is physically located in this state. This chapter does not apply to a franchise solely because an agreement relating to the franchise provides that the agreement is subject to or governed by the laws of this state. The provisions of this chapter do not apply to any existing or future contracts between Iowa franchisors and franchisees who operate franchises located out of state.

95 Acts, ch 117, §1
Section amended

523H.5 Transfer of franchise.

1. A franchisee may transfer the franchised business and franchise to a transferee, provided that the transferee satisfies the reasonable current qualifications of the franchisor for new franchisees. For the purposes of this section, a reasonable current qualification for a new franchisee is a qualification based

upon a legitimate business reason. If the proposed transferee does not meet the reasonable current qualifications of the franchisor, the franchisor may refuse to permit the transfer, provided that the refusal of the franchisor to consent to the transfer is not arbitrary or capricious.

2. Except as otherwise provided in this section, a franchisor may exercise a right of first refusal contained in a franchise agreement after receipt of a proposal from the franchisee to transfer the franchise.

3. A franchisor may require as a condition of a transfer any of the following:

a. That the transferee successfully complete a reasonable training program.

b. That a reasonable transfer fee be paid to reimburse the franchisor for the franchisor's reasonable and actual expenses directly attributable to the transfer.

c. That the franchisee pay or make provision reasonably acceptable to the franchisor to pay any amount due the franchisor or the franchisor's affiliate.

d. That the financial terms of the transfer comply at the time of the transfer with the franchisor's current financial requirements for franchisees.

4. A franchisee may transfer the franchisee's interest in the franchise, for the unexpired term of the

franchise agreement, and a franchisor shall not require the franchisee or the transferee to enter into a new or different franchise agreement as a condition of the transfer.

5. A franchisee shall give the franchisor no less than sixty days' written notice of a transfer which is subject to the provisions of this section, and on request from the franchisor shall provide in writing the ownership interests of all persons holding or claiming an equitable or beneficial interest in the franchise subsequent to the transfer or the franchisee, as appropriate. A franchisee shall not circumvent the intended effect of a contractual provision governing the transfer of the franchise or an interest in the franchise by means of a management agreement, lease, profit-sharing agreement, conditional assignment, or other similar device.

6. A franchisor shall not transfer its interest in a franchise unless the franchisor makes reasonable provision for the performance of the franchisor's obligations under the franchise agreement by the transferee. For purposes of this subsection, "*reasonable provision*" means that upon the transfer, the entity assuming the franchisor's obligations has the financial means to perform the franchisor's obligations in the ordinary course of business, but does not mean that the franchisor transferring the franchise is required to guarantee obligations of the underlying franchise agreement.

7. A transfer by a franchisee is deemed to be approved sixty days after the franchisee submits the request for consent to the transfer unless the franchisor withholds consent to the transfer as evidenced in writing, specifying the reason or reasons for withholding the consent. The written notice must be delivered to the franchisee prior to the expiration of the sixty-day period. Any such notice is privileged and is not actionable based upon a claim of defamation.

8. A franchisor shall not discriminate against a proposed transferee of a franchise on the basis of race, color, national origin, religion, sex, or disability.

9. A franchisor, as a condition to a transfer of a franchise, shall not obligate a franchisee to undertake obligations or relinquish any rights unrelated to the franchise proposed to be transferred, or to enter into a release of claims broader than a similar release of claims by the franchisor against the franchisee which is entered into by the franchisor.

10. A franchisor, after a transfer of a franchise, shall not seek to enforce any covenant of the transferred franchise against the transferor which prohibits the transferor from engaging in any lawful occupation or enterprise. However, this subsection does not prohibit the franchisor from enforcing a contractual covenant against the transferor not to exploit the franchisor's trade secrets or intellectual property rights, unless otherwise agreed to by the parties.

11. For purposes of this section, "*transfer*" means any change in ownership or control of a franchise, franchised business, or a franchisee.

12. The following occurrences shall not be considered transfers requiring the consent of the franchisor under a franchise agreement, and shall not result in the imposition of any penalties or make applicable any right of first refusal by the franchisor:

a. The succession of ownership of a franchise upon the death or disability of a franchisee, or of an owner of a franchise, to the surviving spouse, heir, or a partner active in the management of the franchisee unless the successor fails to meet within one year the then current reasonable qualifications of the franchisor for franchisees and the enforcement of the reasonable current qualifications is not arbitrary or capricious.

b. Incorporation of a proprietorship franchisee, provided that such incorporation does not prohibit a franchisor from requiring a personal guaranty by the franchisee of obligations related to the franchise.

c. A transfer within an existing ownership group of a franchise provided that more than fifty percent of the franchise is held by persons who meet the franchisor's reasonable current qualifications for franchisees. If less than fifty percent of the franchise would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

d. A transfer of less than a controlling interest in the franchise to the franchisee's spouse or child or children, provided that more than fifty percent of the entire franchise is held by those who meet the franchisor's reasonable current qualifications. If less than fifty percent of the franchise would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

e. A transfer of less than a controlling interest in the franchise of an employee stock ownership plan, or employee incentive plan, provided that more than fifty percent of the entire franchise is held by those who meet the franchisor's reasonable current qualifications for franchisees. If less than fifty percent would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

f. A grant or retention of a security interest in the franchised business or its assets, or an ownership interest in the franchisee, provided the security agreement establishes an obligation on the part of the secured party enforceable by the franchisor to give the franchisor notice of the secured party's intent to foreclose on the collateral simultaneously with notice to the franchisee, and a reasonable opportunity to redeem the interests of the secured party and recover the secured party's interest in the franchise or franchised business by paying the secured obligation.

13. A franchisor shall not interfere or attempt to interfere with any disposition of an interest in a franchise or franchised business as described in subsection 12, paragraphs "a" through "f".

95 Acts, ch 117, §2
Section amended

523H.6 Encroachment.

1. If a franchisor develops, or grants to a franchisee the right to develop, a new outlet or location which sells essentially the same goods or services under the same trademark, service mark, trade name, logotype, or other commercial symbol as an existing franchisee and the new outlet or location has an adverse effect on the gross sales of the existing franchisee's outlet or location, the existing adversely affected franchisee has a cause of action for monetary damages in an amount calculated pursuant to subsection 3, unless any of the following apply:

a. The franchisor has first offered the new outlet or location to the existing franchisee on the same basic terms and conditions available to the other potential franchisee, or, if the new outlet or location is to be owned by the franchisor, on the terms and conditions that would ordinarily be offered to a franchisee for a similarly situated outlet or location.

b. The adverse impact on the existing franchisee's annual gross sales, based on a comparison to the annual gross sales from the existing outlet or location during the twelve-month period immediately preceding the opening of the new outlet or location, is determined to have been less than five percent during the first twelve months of operation of the new outlet or location.

c. The existing franchisee, at the time the franchisor develops, or grants to a franchisee the right to develop, a new outlet or location, is not in compliance with the franchisor's then current reasonable criteria for eligibility for a new franchise. A franchisee determined to be ineligible pursuant to this paragraph shall be afforded the opportunity to seek compensation pursuant to the formal procedure established under paragraph "d", subparagraph (2). Such procedure shall be the franchisee's exclusive remedy.

d. The franchisor has established both of the following:

(1) A formal procedure for hearing and acting upon claims by an existing franchisee with regard to a decision by the franchisor to develop, or grant to a franchisee the right to develop, a new outlet or location, prior to the opening of the new outlet or location.

(2) A reasonable formal procedure for awarding compensation or other form of consideration to a franchisee to offset all or a portion of the franchisee's lost profits caused by the establishment of the new outlet or location. The procedure shall involve, at the option of the franchisee, one of the following:

(a) A panel, comprised of an equal number of members selected by the franchisee and the franchisor, and one additional member to be selected unilaterally by the members selected by the franchisee and the franchisor.

(b) A neutral third-party mediator or an arbitrator with the authority to make a decision or award in accordance with the formal procedure. The procedure shall be deemed reasonable if approved by a majority of the franchisor's franchisees in the United States, either individually or by an elected representative body.

(c) Arbitration of any dispute before neutral arbitrators pursuant to the rules of the American arbitration association. The award of an arbitrator pursuant to this subparagraph subdivision is subject to judicial review pursuant to chapter 679A.

2. A franchisor shall establish and make available to its franchisees a written policy setting forth its reasonable criteria to be used by the franchisor to determine whether an existing franchisee is eligible for a franchise for an additional outlet or location.

3. a. In establishing damages under a cause of action brought pursuant to this section, the franchisee has the burden of proving the amount of lost profits attributable to the compensable sales. In any action brought under this section, the damages payable shall be limited to no more than three years of the proven lost profits. For purposes of this subsection, "compensable sales" means the annual gross sales from the existing outlet or location during the twelve-month period immediately preceding the opening of the new outlet or location less both of the following:

(1) Five percent.

(2) The actual gross sales from the operation of the existing outlet or location for the twelve-month period immediately following the opening of the new outlet or location.

b. Compensable sales shall exclude any amount attributable to factors other than the opening and operation of the new outlet or location.

4. Any cause of action brought under this section must be filed within eighteen months of the opening of the new outlet or location or within three months after the completion of the procedure under subsection 1, paragraph "d", subparagraph (2), whichever is later.

5. Upon petition by the franchisor or the franchisee, the district court may grant a permanent or preliminary injunction to prevent injury or threatened injury for a violation of this section or to preserve the status quo pending the outcome of the formal procedure under subsection 1, paragraph "d", subparagraph (2).

95 Acts, ch 117, §3
Section stricken and rewritten

523H.7 Termination.

1. Except as otherwise provided by this chapter, a franchisor shall not terminate a franchise prior to the expiration of its term except for good cause. For purposes of this section, "good cause" is cause based upon a legitimate business reason. "Good cause" includes the failure of the franchisee to comply with any material lawful requirement of the franchise agreement, provided that the termination by the

franchisor is not arbitrary or capricious when compared to the actions of the franchisor in other similar circumstances. The burden of proof of showing that action of the franchisor is arbitrary or capricious shall rest with the franchisee.

2. Prior to termination of a franchise for good cause, a franchisor shall provide a franchisee with written notice stating the basis for the proposed termination. After service of written notice, the franchisee shall have a reasonable period of time to cure the default, which in no event shall be less than thirty days or more than ninety days. In the event of nonpayment of moneys due under the franchise agreement, the period to cure need not exceed thirty days.

3. Notwithstanding subsection 2, a franchisor may terminate a franchisee upon written notice and without an opportunity to cure if any of the following apply:

a. The franchisee or the business to which the franchise relates is declared bankrupt or judicially determined to be insolvent.

b. All or a substantial part of the assets of the franchise or the business to which the franchisee relates are assigned to or for the benefit of any creditor which is subject to chapter 681. An assignment for the benefit of any creditor pursuant to this paragraph does not include the granting of a security interest in the normal course of business.

c. The franchisee voluntarily abandons the franchise by failing to operate the business for five consecutive business days during which the franchisee is required to operate the business under the terms of the franchise, or any shorter period after which it is not unreasonable under the facts and circumstances for the franchisor to conclude that the franchisee does not intend to continue to operate the franchise, unless the failure to operate is due to circumstances beyond the control of the franchisee.

d. The franchisor and franchisee agree in writing to terminate the franchise.

e. The franchisee knowingly makes any material misrepresentations or knowingly omits to state any material facts relating to the acquisition or ownership or operation of the franchise business.

f. After three material breaches of a franchise agreement occurring within a twelve-month period, for which the franchisee has been given notice and an opportunity to cure, the franchisor may terminate upon any subsequent material breach within the twelve-month period without providing an opportunity to cure, provided that the action is not arbitrary and capricious.

g. The franchised business or business premises of the franchisee are lawfully seized, taken over, or foreclosed by a government authority or official.

h. The franchisee is convicted of a felony or any other criminal misconduct which materially and adversely affects the operation, maintenance, or goodwill of the franchise in the relevant market.

i. The franchisee operates the franchised business in a manner that imminently endangers the public health and safety.

95 Acts, ch 117, §4
Section amended

523H.8 Nonrenewal of a franchise.

1. A franchisor shall not refuse to renew a franchise unless both of the following apply:

a. The franchisee has been notified of the franchisor's intent not to renew at least six months prior to the expiration date or any extension of the franchise agreement.

b. Any of the following circumstances exist:

(1) Good cause exists, provided that the refusal of the franchisor to renew is not arbitrary or capricious. For purposes of this section, "good cause" means cause based on a legitimate business reason.

(2) The franchisor and franchisee agree not to renew the franchise.

(3) The franchisor completely withdraws from directly or indirectly distributing its products or services in the geographic market served by the franchisee, provided that upon expiration of the franchise, the franchisor agrees not to seek to enforce any covenant of the nonrenewed franchisee not to compete with the franchisor or franchisees of the franchisor.

2. As a condition of renewal of the franchise, a franchise agreement may require that the franchisee meet the then current requirements for franchises and that the franchisee execute a new agreement incorporating the then current terms and fees for new franchises.

95 Acts, ch 117, §5
Section amended

523H.11 Repurchase of assets.

A franchisor shall not prohibit a franchisee from, or enforce a prohibition against a franchisee, engaging in any lawful business at any location after a termination or refusal to renew by a franchisor, unless it is one which relies on a substantially similar marketing program as the terminated or nonrenewed franchise or unless the franchisor offers in writing no later than ten business days before expiration of the franchise to purchase the assets of the franchised business for its fair market value as a going concern. The value of the assets shall not include the goodwill of the business attributable to the trademark licensed to the franchisee in the franchise agreement. The offer may be conditioned upon the ascertainment of a fair market value by an impartial appraiser. This section does not apply to assets of the franchised business which the franchisee did not purchase from the franchisor, or the agent of the franchisor.

95 Acts, ch 117, §6
Section amended

CHAPTER 523I

CEMETERIES

See also chapter 566A

523I.1 Definitions.

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

1. "Abandoned cemetery" means any cemetery where there has been a failure to cut grass or weeds or care for graves, grave markers, walls, fences, drive-ways, and buildings, or for which proper records have not been maintained.

2. "Cemetery" means a cemetery, mausoleum, columbarium, or other space held for the purpose of burial, entombment, or inurnment of human remains, and which is subject to this chapter.

3. "Commissioner" means the commissioner of insurance or the deputy appointed under section 502.601.

4. "Interment rights" means a right of use conveyed by contract or property ownership to inter human rights* in a columbarium, grave, mausoleum, lawn crypt, or undeveloped space.

5. "Perpetual care cemetery" means a cemetery which has established a perpetual care fund for the maintenance, repair, and care of all interment spaces subject to perpetual care within the cemetery in compliance with section 566A.3 or 566A.4.

95 Acts, ch 149, §22

*Human "remains" probably intended; corrective legislation is pending
NEW section

523I.2 Applicability — cemeteries commencing business after July 1, 1995.

A cemetery which is organized or commences business in this state on or after July 1, 1995, shall operate as a perpetual care cemetery and is subject to this chapter and other applicable law.

95 Acts, ch 149, §23

NEW section

523I.3 Permit requirements.

1. A perpetual care cemetery shall not sell or offer interment rights to the public without a permit as provided for in this section.

2. Applications for a permit shall be made to and filed with the commissioner on forms approved by the commissioner and accompanied by a filing fee of twenty dollars. If the application contains the following information, the commissioner shall issue the license:

a. The name and principal address of the applicant.

b. The identity of the applicant's owner or owners.

c. Evidence of a trust fund for cemetery maintenance and care in compliance with section 566A.3 or 566A.4.

3. Each permit issued under this chapter shall expire on June 30 of the year following the date of issuance.

95 Acts, ch 149, §24

NEW section

523I.4 Denial, suspension, or revocation of permit.

The commissioner, pursuant to chapter 17A, may deny, suspend, or revoke any permit to operate a cemetery if the commissioner finds any of the following:

1. The cemetery has committed a fraudulent practice, or the cemetery's trust assets, warehoused merchandise, surety bonds, or insurance funding are in material noncompliance with chapter 523A or 523E or section 566A.3 or 566A.4.

2. An owner or officer of the cemetery has been convicted of a felony related to the sale of interment rights or the sale of funeral services, funeral merchandise, or cemetery merchandise, as defined in section 523A.5, subsection 2, paragraphs "a" and "b", and section 523E.5, subsection 2, paragraph "a".

95 Acts, ch 149, §25

NEW section

523I.5 Liquidation.

1. *Grounds for liquidation.* The commissioner may petition the district court for an order directing the commissioner to liquidate a perpetual care cemetery on any of the following grounds:

a. The cemetery's trust fund is in material noncompliance with the requirements of section 566A.3 or 566A.4 and is insolvent.

b. The cemetery's trust fund is in material noncompliance with the requirements of section 566A.3 or 566A.4 and the condition of the cemetery is such that the further transaction of business would be hazardous, financially or otherwise, to its customers or the public.

c. The cemetery has been abandoned.

2. *Liquidation order.*

a. An order to liquidate the business of a perpetual care cemetery shall appoint the commissioner as liquidator and shall direct the liquidator to immediately take possession of the assets of the cemetery and to administer them under the general supervision of the court. The liquidator is vested with the title to the property, contracts, and rights of action and the books and records of the cemetery ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of court and the recorder of deeds of the county in which its principal office or place of business is located, or, in the case of real estate with the recorder of deeds of the county where the property is located, is notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the recorder of deeds.

b. Upon issuance of an order, the rights and liabilities of a cemetery and of the cemetery's creditors, customers, owners, and other persons interested in

the cemetery's estate shall become fixed as of the date of the entry of the order of liquidation, except as provided in subsection 14.

c. At the time of petitioning for an order of liquidation, or at any time after the time of petitioning, the commissioner, after making appropriate findings of a cemetery's insolvency, may petition the court for a declaration of insolvency. After providing notice and hearing as it deems proper, the court may make the declaration.

d. An order issued under this section shall require accounting to the court by the liquidator. Accountings, at a minimum, must include all funds received or disbursed by the liquidator during the current period. An accounting shall be filed within one year of the liquidation order and at such other times as the court may require.

e. Within five days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the cemetery's obligations during the pendency of an appeal. The plan shall provide for the continued performance of interment rights contracts in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. If the defendant cemetery's financial condition, in the judgment of the commissioner, will not support the full performance of all obligations during the appeal pendency period, the plan may prefer the claims of certain customers and claimants over creditors and interested parties as well as other customers and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such customers and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. An action shall not lie against the commissioner or any of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

3. Powers of liquidator.

a. The liquidator may do any of the following:

(1) Appoint a special deputy to act for the liquidator under this chapter, and determine the special deputy's reasonable compensation. The special deputy shall have all the powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(2) Hire employees and agents, legal counsel, accountants, appraisers, consultants, and other personnel as the commissioner may deem necessary to assist in the liquidation.

(3) With the approval of the court fix reasonable compensation of employees and agents, legal counsel, accountants, appraisers and consultants.

(4) Pay reasonable compensation to persons appointed and defray from the funds or assets of the cemetery all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the

cemetery. If the property of the cemetery does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of the insurance division cemetery fund. Amounts so advanced for expenses of administration shall be repaid to the insurance division cemetery fund for the use of the division out of the first available moneys of the cemetery.

(5) Hold hearings, subpoena witnesses, and compel their attendance, administer oaths, examine a person under oath, and compel a person to subscribe to the person's testimony after it has been correctly reduced to writing, and in connection to the proceedings require the production of books, papers, records, or other documents which the liquidator deems relevant to the inquiry.

(6) Collect debts and moneys due and claims belonging to the cemetery, wherever located. Pursuant to this subparagraph, the liquidator may do any of the following:

(a) Institute timely action in other jurisdictions to forestall garnishment and attachment proceedings against debts.

(b) Perform acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions as the liquidator deems best.

(c) Pursue any creditor's remedies available to enforce claims.

(7) Conduct public and private sales of the property of the cemetery.

(8) Use assets of the cemetery under a liquidation order to transfer obligations of preneed funeral contracts to a solvent cemetery, if the transfer can be accomplished without prejudice to applicable priorities under subsection 18.

(9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with property of the cemetery at its market value or upon terms and conditions as are fair and reasonable. The liquidator shall also have power to execute, acknowledge, and deliver deeds, assignments, releases, and other instruments necessary to effectuate a sale of property or other transaction in connection with the liquidation.

(10) Borrow money on the security of the cemetery's assets or without security and execute and deliver documents necessary to that transaction for the purpose of facilitating the liquidation. Money borrowed pursuant to this subparagraph shall be repaid as an administrative expense and have priority over any other class 1 claims under the priority of distribution established in subsection 18.

(11) Enter into contracts as necessary to carry out the order to liquidate and affirm or disavow contracts to which the cemetery is a party.

(12) Continue to prosecute and to institute in the name of the cemetery or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the liquidator deems unprofitable to pursue further.

(13) Prosecute an action on behalf of the creditors, customers, or owners against an officer of the cemetery or any other person.

(14) Remove records and property of the cemetery to the offices of the commissioner or to other places as may be convenient for the purposes of efficient and orderly execution of the liquidation.

(15) Deposit in one or more banks in this state sums as are required for meeting current administration expenses and distributions.

(16) Unless the court orders otherwise, invest funds not currently needed.

(17) File necessary documents for recording in the office of a recorder of deeds or record office in this state or elsewhere where property of the cemetery is located.

(18) Assert defenses available to the cemetery as against third persons including statutes of limitations, statutes of fraud, and the defense of usury. A waiver of a defense by the cemetery after a petition in liquidation has been filed shall not bind the liquidator.

(19) Exercise and enforce the rights, remedies, and powers of a creditor, customer, or owner, including the power to avoid transfer or lien that may be given by the general law and that is not included within subsections 7 through 9.

(20) Intervene in a proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

(21) Exercise powers now held or later conferred upon receivers by the laws of this state which are not inconsistent with this chapter.

b. This subsection does not limit the liquidator or exclude the liquidator from exercising a power not listed in paragraph "a" that may be necessary or appropriate to accomplish the purposes of this chapter.

4. *Notice to creditors and others.*

a. Unless the court otherwise directs, the liquidator shall give notice of the liquidation order as soon as possible by doing all of the following:

(1) By first-class mail to all persons known or reasonably expected to have claims against the cemetery by mailing a notice to their last known address as indicated by the records of the cemetery.

(2) By publication in a newspaper of general circulation in the county in which the cemetery has its principal place of business and in other locations as the liquidator deems appropriate.

b. Notice to potential claimants under paragraph "a" shall require claimants to file with the liquidator their claims together with proper proofs of the claim under subsection 13 on or before a date the liquidator shall specify in the notice. Claimants shall keep the liquidator informed of their changes of address, if any.

c. If notice is given pursuant to this section, the distribution of assets of the cemetery under this chapter shall be conclusive with respect to claimants, whether or not a claimant actually received notice.

5. *Actions by and against liquidator.*

a. After the issuance of an order appointing a liquidator of a cemetery, an action at law or equity shall not be brought against the cemetery in this state or elsewhere, and existing actions shall not be maintained or further presented after issuance of the order. Whenever in the liquidator's judgment, protection of the estate of the cemetery necessitates intervention in an action against the cemetery that is pending outside this state, the liquidator may intervene in the action. The liquidator may defend, at the expense of the estate of the cemetery, an action in which the liquidator intervenes under this section.

b. Within two years or such additional time as applicable law may permit, the liquidator, after the issuance of an order for liquidation, may institute an action or proceeding on behalf of the estate of the cemetery upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which the order is entered. If a period of limitation is fixed by agreement for instituting a suit or proceeding upon a claim, or for filing a claim, proof of claim, proof of loss, demand, notice, or the like, or if in a proceeding, judicial or otherwise, a period of limitation is fixed in the proceeding or pursuant to applicable law for taking an action, filing a claim or pleading, or doing an act, and if the period had not expired at the date of the filing of the petition, the liquidator, for the benefit of the estate, may take any action or do any act, required of or permitted to the cemetery, within a period of one hundred eighty days subsequent to the entry of an order for liquidation, or within a further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

c. A statute of limitation or defense of laches shall not run with respect to an action against a cemetery between the filing of a petition for liquidation against the cemetery and the denial of the petition. An action against the cemetery that might have been commenced when the petition was filed may be commenced for at least sixty days after the petition is denied.

6. *Collection and list of assets.*

a. As soon as practicable after the liquidation order but not later than one hundred twenty days after such order, the liquidator shall prepare in duplicate a list of the cemetery's assets. The list shall be amended or supplemented as the liquidator may determine. One copy shall be filed in the office of the clerk of court and one copy shall be retained for the liquidator's files. Amendments and supplements shall be similarly filed.

b. The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

c. A submission to the court for distribution of assets in accordance with subsection 11 fulfills the requirements of paragraph "a".

7. *Fraudulent transfers prior to petition.*

a. A transfer made and an obligation incurred by a cemetery within one year prior to the filing of a

successful petition for liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A fraudulent transfer made or an obligation incurred by a cemetery ordered to be liquidated under this chapter may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value. A purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court, on due notice, may order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee under subsection 9, paragraph "c".

(2) A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the cemetery could not obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained a lien or persons who might have become bona fide purchasers.

8. *Fraudulent transfer after petition.*

a. After a petition for liquidation has been filed a transfer of real property of the cemetery made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred. The commencement of a proceeding in liquidation is constructive notice upon the recording of a copy of the petition for or order of liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or a state or jurisdiction to authorize a judicial sale of real property of the cemetery within a county in a state shall not be impaired by the pendency of a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

b. After a petition for liquidation has been filed and before either the receiver takes possession of the property of the cemetery or an order of liquidation is granted:

(1) A transfer of the property, other than real property, of the cemetery made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred.

(2) If acting in good faith, a person indebted to the cemetery or holding property of the cemetery may pay the debt or deliver the property, or any part of the property, to the cemetery or upon the cemetery's order as if the petition were not pending.

(3) A person having actual knowledge of the pending liquidation is not acting in good faith.

(4) A person asserting the validity of a transfer under this subsection has the burden of proof. Except as provided in this subsection, a transfer by or on behalf of the cemetery after the date of the petition for liquidation by any person other than the liquidator is not valid against the liquidator.

c. A person receiving any property from the cemetery or any benefit of the property of the cemetery which is a fraudulent transfer under paragraph "a" is personally liable for the property or benefit and shall account to the liquidator.

d. This chapter does not impair the negotiability of currency or negotiable instruments.

9. *Voidable preferences and liens.*

a. (1) A preference is a transfer of the property of a cemetery to or for the benefit of a creditor for an antecedent debt made or suffered by the cemetery within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the cemetery is already subject to a receivership, then the transfers are preferences if made or suffered within one year before the filing of the successful petition for the receivership, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(2) A preference may be avoided by the liquidator if any of the following exist:

(a) The cemetery was insolvent at the time of the transfer.

(b) The transfer was made within four months before the filing of the petition.

(c) At the time the transfer was made, the creditor receiving it or to be benefited by the transfer or the creditor's agent acting with reference to the transfer had reasonable cause to believe that the cemetery was insolvent or was about to become insolvent.

(d) The creditor receiving the transfer was an officer, or an employee, attorney, or other person who was in fact in a position of comparable influence in the cemetery to an officer whether or not the person held the position of an officer, owner, or other person, firm, corporation, association, or aggregation of persons with whom the cemetery did not deal at arm's length.

(3) Where the preference is voidable, the liquidator may recover the property. If the property has been converted, the liquidator may recover its value from a person who has received or converted the property. However, if a bona fide purchaser or lienor has given less than fair equivalent value, the purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given. Where a preference by way of lien or security interest is voidable, the court may on due notice order the lien or security interest to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee.

(2) A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the cemetery could not obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

c. (1) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(2) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of paragraph "b", if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by a step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. However, a lien could not become superior and a purchase could not create superior rights for the purpose of paragraph "b" through an act subsequent to the obtaining of a lien or subsequent to a purchase which requires the agreement or concurrence of any third party or which requires further judicial action or ruling.

d. A transfer of property for or on account of a new and contemporaneous consideration, which is under paragraph "b" made or suffered after the transfer because of delay in perfecting it, does not become a transfer for or on account of an antecedent debt if any

acts required by the applicable law to be performed in order to perfect the transfer as against liens or a bona fide purchaser's rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

e. If a lien voidable under paragraph "a", subparagraph (2), has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer or the creation of a lien upon property of a cemetery before the filing of a petition under this chapter which results in a liquidation order, the indemnifying transfer or lien is also voidable.

f. The property affected by a lien voidable under paragraphs "a" and "e" is discharged from the lien. The property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator. However, the court may on due notice order a lien to be preserved for the benefit of the estate and the court may direct that the conveyance be executed to evidence the title of the liquidator.

g. The court shall have summary jurisdiction of a proceeding by the liquidator to hear and determine the rights of the parties under this section. Reasonable notice of hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, upon application of any party in interest, the court shall in the same proceeding ascertain the value of the property or lien. If the value is less than the amount for which the property is indemnified or less than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within the time as fixed by the court.

h. The liability of a surety under a releasing bond or other like obligation is discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator. Where the property is retained under paragraph "g", the liability of the surety is discharged to the extent of the amount paid to the liquidator.

i. If a creditor has been preferred for property which becomes a part of the cemetery's estate, and afterward in good faith gives the cemetery further credit without security of any kind, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from the creditor.

j. If within four months before the filing of a successful petition for liquidation under this chapter, or at any time in contemplation of a proceeding to liquidate, a cemetery, directly or indirectly, pays money or transfers property to an attorney for ser-

vices rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator. The payment or transfer shall be held valid only to the extent of a reasonable amount to be determined by the court. The excess may be recovered by the liquidator for the benefit of the estate. However, where the attorney is in a position of influence in the cemetery or an affiliate, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered is governed by the provision of paragraph "a", subparagraph (2), subparagraph subdivision (d).

k. (1) An officer, manager, employee, shareholder, subscriber, attorney, or any other person acting on behalf of the cemetery who knowingly participates in giving any preference when the person has reasonable cause to believe the cemetery is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. There is an inference that reasonable cause exists if the transfer was made within four months before the date of filing of this successful petition for liquidation.

(2) A person receiving property from the cemetery or the benefit of the property of the cemetery as a preference voidable under paragraph "a" is personally liable for the property and shall account to the liquidator.

(3) This subsection shall not prejudice any other claim by the liquidator against any person.

10. *Claims of holder of void or voidable rights.*

a. A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance, voidable under this chapter shall not be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within thirty days from the date of the entering of the final judgment. However, the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

b. A claim allowable under paragraph "a" by reason of a voluntary or involuntary avoidance, preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under subsection 12, if filed within thirty days from the date of the avoidance or within the further time allowed by the court under paragraph "a".

11. *Liquidator's proposal to distribute assets.*

a. From time to time as assets become available, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshaled assets.

b. The proposal shall at least include provisions for all of the following:

(1) Reserving amounts for the payment of all the following:

(a) Expenses of administration.

(b) To the extent of the value of the security held, the payment of claims of secured creditors.

(c) Claims falling within the priorities established in subsection 18, paragraphs "a" and "b".

(2) Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available.

c. Action on the application may be taken by the court provided that the liquidator's proposal complies with paragraph "b".

12. *Filing of claims.*

a. Proof of all claims shall be filed with the liquidator in the form required by subsection 13 on or before the last day for filing specified in the notice required under subsection 4.

b. The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if the claimant were not late, to the extent that the payment will not prejudice the orderly administration of the liquidation under any of the following circumstances:

(1) The existence of the claim was not known to the claimant and that the claimant filed the claim as promptly as reasonably possible after learning of it.

(2) A transfer to a creditor was avoided under subsections 7 through 9, or was voluntarily surrendered under subsection 10, and that the filing satisfies the conditions of subsection 10.

(3) The valuation under subsection 17 of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation.

c. The liquidator may consider any claim filed late and permit the claimant to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive at each distribution the same percentage of the amount allowed on the claim as is then being paid to claimants of any lower priority. This shall continue until the claim has been paid in full.

13. *Proof of claim.*

a. Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

(1) The particulars of the claim including the consideration given for it.

(2) The identity and amount of the security on the claim.

(3) The payments, if any, made on the debt.

(4) A statement that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim.

(5) Any right of priority of payment or other specific right asserted by the claimant.

(6) A copy of the written instrument which is the foundation of the claim.

(7) The name and address of the claimant and the attorney who represents the claimant, if any.

b. A claim need not be considered or allowed if it does not contain all the information identified in

paragraph "a" which is applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

c. At any time the liquidator may request the claimant to present information or evidence supplementary to that required under paragraph "a" and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

d. A judgment or order against a cemetery entered after the date of filing of a successful petition for liquidation, or a judgment or order against the cemetery entered at any time by default or by collusion need not be considered as evidence of liability or of the amount of damages. A judgment or order against a cemetery before the filing of the petition need not be considered as evidence of liability or of the amount of damages.

14. *Special claims.*

a. A claim may be allowed even if contingent, if it is filed pursuant to subsection 12. The claim may be allowed and the claimant may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

b. Claims that are due except for the passage of time shall be treated as absolute claims are treated. However, the claims may be discounted at the legal rate of interest.

c. Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of an order of liquidation under subsection 2.

15. *Disputed claims.*

a. If a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or the claimant's attorney by first-class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file objections with the liquidator. Unless a filing is made, the claimant shall not further object to the determination.

b. If objections are filed with the liquidator and the liquidator does not alter the denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first-class mail to the claimant or the claimant's attorney and to any other persons directly affected. The notice shall be given not less than ten nor more than thirty days before the date of the hearing. The matter shall be heard by the court or by a court-appointed referee. The referee shall submit findings of fact along with a recommendation.

16. *Claims of other person.* If a creditor, whose claim against a cemetery is secured in whole or in part by the undertaking of another person, fails to prove and file that claim, then the other person may do so in the creditor's name and shall be subrogated

to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name to the extent that the other person discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person is not entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the cemetery's estate to the creditor equal the amount of the entire claim of the creditor. An excess received by the creditor shall be held by the creditor in trust for the other person.

17. *Secured creditor's claims.*

a. The value of security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

(1) By converting the security into money according to the terms of the agreement pursuant to which the security was delivered to the creditors.

(2) By agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

b. The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount determined shall be credited upon the secured claim. A deficiency shall be treated as an unsecured claim. If the claimant surrenders the security to the liquidator, the entire claim shall be allowed as if unsecured.

18. *Priority of distribution.* The priority of distribution of claims from the cemetery's estate shall be in accordance with the order in which each class of claims is set forth. Claims in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. Subclasses shall not be established within a class. The order of distribution of claims is as follows:

a. *Class 1.* The costs and expenses of administration, including but not limited to the following:

(1) The actual and necessary costs of preserving or recovering the assets of the cemetery.

(2) Compensation for all authorized services rendered in the liquidation.

(3) Necessary filing fees.

(4) The fees and mileage payable to witnesses.

(5) Authorized reasonable attorney's fees and other professional services rendered in the liquidation.

b. *Class 2.* Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. The priority is in lieu of other similar priority which may be authorized by law as to wages or compensation of employees.

c. *Class 3.* Claims under interment rights contracts.

d. *Class 4.* Claims of general creditors.

e. *Class 5.* Claims of the federal or any state or local government. Claims, including those of a governmental body for a penalty or forfeiture, are allowed in this class only to the extent of the pecuniary

loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs incurred. The remainder of such claims shall be postponed to the class of claims under paragraph "g".

f. *Class 6.* Claims filed late or any other claims other than claims under paragraph "g".

g. *Class 7.* The claims of shareholders or other owners.

19. *Liquidator's recommendations to the court.*

a. The liquidator shall review claims duly filed in the liquidation and shall make further investigation as necessary. The liquidator may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by a person or organization. Unresolved disputes shall be determined under subsection 15. As soon as practicable, the liquidator shall present to the court a report of the claims against the cemetery with the liquidator's recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended.

b. The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within sixty days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to subsection 15. A claim under a policy of insurance shall not be allowed for an amount in excess of the applicable policy limits.

20. *Distribution of assets.* Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

21. *Unclaimed and withheld funds.*

a. Unclaimed funds subject to distribution remaining in the liquidator's hands when the liquidator is ready to apply to the court for discharge, including the amount distributable to a creditor, owner, or other person who is unknown or cannot be found, shall be deposited with the treasurer of state, and shall be paid without interest, except as provided in subsection 18, to the person entitled or the person's legal representative upon proof satisfactory to the treasurer of state of the right to the funds. An amount on deposit not claimed within six years from the discharge of the liquidator is deemed to have been abandoned and shall become the property of the state without formal escheat proceedings and be transferred to the insurance division regulatory fund.

b. Funds withheld under subsection 14 and not distributed shall upon discharge of the liquidator be deposited with the treasurer of state and paid pur-

suant to subsection 18. Sums remaining which under subsection 18 would revert to the undistributed assets of the cemetery shall be transferred to the insurance division regulatory fund and become the property of the state as provided under paragraph "a", unless the commissioner in the commissioner's discretion petitions the court to reopen the liquidation pursuant to subsection 23.

c. Notwithstanding any other provision of this chapter, funds as identified in paragraph "a", with the approval of the court, shall be made available to the commissioner for use in the detection and prevention of future insolvencies. The commissioner shall hold these funds in the insurance division regulatory fund and shall pay without interest, except as provided in subsection 18, to the person entitled to the funds or the person's legal representative upon proof satisfactory to the commissioner of the person's right to the funds. The funds shall be held by the commissioner for a period of two years at which time the rights and duties to the unclaimed funds shall vest in the commissioner.

22. *Termination of proceedings.*

a. When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer remaining funds that are uneconomical to distribute, as appropriate.

b. Any other person may apply to the court at any time for an order under paragraph "a". If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

23. *Reopening liquidation.* At any time after the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may petition the court to reopen the proceedings for good cause including the discovery of additional assets. The court shall order the proceeding reopened if it is satisfied that there is justification for the reopening.

24. *Disposition of records during and after termination of liquidation.* If it appears to the commissioner that the records of a cemetery in process of liquidation or completely liquidated are no longer useful, the commissioner may recommend to the court and the court shall direct what records shall be retained for future reference and what records shall be destroyed.

25. *External audit of receiver's books.* The court may order audits to be made of the books of the commissioner relating to a receivership established under this chapter, and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of an audit shall be considered a cost of administration of the receivership.

523L.6 Powers and duties of perpetual care cemeteries.

1. Within the boundaries of the cemetery lands that the cemetery owns, a cemetery may perform the following functions:

a. The exclusive care and maintenance of the cemetery.

b. The exclusive interment, entombment, or inurnment of human remains, including the exclusive right to open, prepare for interment, and close all ground, mausoleum, and urn burials. Each preneed contract for burial rights or services shall disclose, pursuant to the cemetery's bylaws, rules, and regulations, whether opening and closing of the burial space is included in the contract, and, if not, the current prices for opening and closing and a statement that these prices are subject to change. Each cemetery which sells preneed contracts must offer opening and closing as part of a preneed contract.

c. The exclusive initial preneed and at-need sale of interment or burial rights in earth, mausoleum, crypt, niche, or columbarium interment. However, this chapter does not limit the right of a person owning interment or burial rights to sell those rights to third parties subject to transfer of title by the cemetery.

d. The adoption of bylaws regulating the activities conducted within the cemetery's boundaries, provided that a licensed funeral director shall not be denied access by any cemetery to conduct a funeral for or supervise a disinterment of human remains. The cemetery shall not approve any bylaw which unreasonably restricts competition, or which unreasonably increases the cost to the owner of interment or burial rights in utilizing these rights.

e. The nonexclusive preneed and at-need sale of monuments, memorials, markers, burial vaults,

urns, flower vases, floral arrangements, and other similar merchandise for use within the cemetery.

f. The entry into sales or management contracts with other persons. The cemetery shall be responsible for the deposit of all moneys required to be placed in a trust fund.

2. A full disclosure shall be made of all fees required for interment, entombment, or inurnment of human remains.

3. A cemetery may adopt bylaws establishing minimum standards for burial merchandise or the installation of such merchandise.

95 Acts, ch 149, §27
NEW section

523L.7 Investigations.

The commissioner or the attorney general, for the purpose of discovering violations of this chapter, may do any of the following:

1. Investigate the cemetery and examine records as necessary to verify compliance with this chapter.

2. Administer oaths and affirmations, subpoena witnesses, receive evidence, and require the production of documents and records in connection with an investigation or proceeding being conducted pursuant to this chapter.

3. Apply to the district court for issuance of an order requiring a person's appearance before the commissioner or attorney general, or a designee of either or both, in cases where the person has refused to obey a subpoena issued by the commissioner or attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

95 Acts, ch 149, §28
NEW section

CHAPTER 524

BANKS

524.103 Definitions.

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

1. "Account" means any account with a state bank and includes a demand, time or savings deposit account or any account for the payment of money to a state bank.

2. "Administrator" means the person designated in section 537.6103.

3. "Aggregate capital" means the sum of capital, surplus, undivided profits, and reserves as of the most recent calculation date.

4. "Agreement for the payment of money" means a monetary obligation, other than an obligation in the form of an evidence of indebtedness or an investment security; including, but not limited to, amounts payable on open book accounts receivable and executory

contracts and rentals payable under leases of personal property.

5. "Agricultural credit corporation" means as defined in section 535.12, subsection 4.

6. "Articles of incorporation" means the original or restated articles of incorporation and all amendments thereto and includes articles of merger.

7. "Assets" means all the property and rights of every kind of a state bank.

8. "Bank" means a corporation organized under this chapter or Title 12 of the United States Code.

9. "Bankers' bank" means a bank which is organized under the laws of any state or under federal law, and whose shares are owned exclusively by other banks or by a bank holding company whose shares are owned exclusively by other banks, except for directors' qualifying shares when required by law,

and which engages exclusively in providing services for depository institutions and officers, directors and employees of those depository institutions.

10. "*Borrower*" means a person named as a borrower or debtor in a loan or extension of credit, or any other person, including a drawer, endorser, or guarantor, deemed to be a borrower under section 524.904, subsection 3.

11. "*Business of banking*" means the business generally done by banks.

12. "*Calculation date*" means the most recent of the following:

a. The date the bank's statement of condition is required to be filed pursuant to section 524.220, subsection 2.

b. The date an event occurs that reduces or increases the bank's aggregate capital by ten percent or more.

c. As the superintendent may direct.

13. "*Capital*" means the sum of the par value of the preferred and common shares of a state bank issued and outstanding.

14. "*Capital structure*" means the capital, surplus, and undivided profits of a state bank and shall include an amount equal to the sum of any capital notes and debentures issued and outstanding pursuant to section 524.404.

15. "*Chief executive officer*" means the person designated by the board of directors to be responsible for the implementation of and adherence to board policies and resolutions by all officers and employees of the bank.

16. "*Contractual commitment to advance funds*" means a bank's obligation to do either of the following:

a. Advance funds under a standby letter of credit or other similar arrangement.

b. Make payment, directly or indirectly, to a third person contingent upon default by a customer of the bank in performing an obligation and to make such payment in keeping with the agreed upon terms of the customer's contract with a third person, or to make payments upon some other stated condition.

The term does not include commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw on the issuer, that do not guarantee payment, and that do not provide for payment in the event of a default by a third person.

17. "*Control*" means when a person, directly or indirectly or acting through or together with one or more persons, satisfies any of the following:

a. Owns, controls, or has the power to vote fifty percent or more of any class of voting securities of another person.

b. Controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person.

c. Has the power to exercise a controlling influence over the management or policies of another person.

18. "*Customer*" means a person with an account or other contractual arrangement with a state bank.

19. "*Evidence of indebtedness*" means a note, draft or similar negotiable or nonnegotiable instrument.

20. "*Executive officer*" means a person who participates or has authority to participate, other than in the capacity of a director, in major policymaking functions of a state bank, whether or not the officer has an official title, whether or not such a title designates the officer as an assistant, or whether or not the officer is serving without salary or other compensation. The chief executive officer, chairperson of the board, the president, every vice president, and the cashier of a state bank are deemed to be executive officers, unless such an officer is excluded, by resolution of the board of directors of a state bank or by the bylaws of the state bank, from participation, other than in the capacity of a director, in major policymaking functions of the state bank, and the officer does not actually participate in the major policymaking functions. All officers who serve on a board of directors are deemed to be executive officers, except as provided for in section 524.701, subsection 3.

21. "*Fiduciary*" means an executor, administrator, guardian, conservator, receiver, trustee or one acting in a similar capacity.

22. "*Insolvent*" means the inability of a state bank to pay its debts and obligations as they become due in the ordinary course of its business. A state bank is also considered to be insolvent if the ratio of its capital, surplus, and undivided profits to assets is at or close to zero or if its assets are of such poor quality that its continued existence is uncertain.

23. "*Insured bank*" means a state bank the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act.

24. "*Municipal corporation*" means an incorporated city.

25. "*Officer*" means chief executive officer, executive officer, or any other administrative official of a bank elected by the bank's board of directors to carry out any of the bank's operating rules and policies.

26. "*Operations subsidiary*" means a wholly owned corporation incorporated and controlled by a bank that performs functions which the bank is authorized to perform.

27. "*Person*" means as defined in section 4.1.

28. "*Reserves*" means the amount of the allowance for loan and lease losses of a state bank.

29. "*Sale of federal funds*" means any transaction between depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at federal reserve banks, or from credits to new or existing deposit balances due from a correspondent depository institution.

30. "*Shareholder*" means one who is a holder of record of shares in a state bank.

31. "*Shares*" means the units into which the proprietary interests in a state bank are divided.

32. "*Standby letter of credit*" means a letter of credit, or similar arrangement, that represents an obligation to the beneficiary on the part of the issuer to do any of the following:

a. Repay money borrowed by or advanced to or for the account of the account holder.

b. Make payment on account of any indebtedness undertaken by the account holder.

c. Make payment on account of any default by the account holder in the performance of an obligation.

33. "State bank" means any bank incorporated pursuant to the provisions of this chapter after January 1, 1970, and any "state bank" or "savings bank" incorporated pursuant to the laws of this state and doing business as such on January 1, 1970.

34. "Superintendent" means the superintendent of banking of this state.

35. "Supervised financial organization" as defined and used in the Iowa consumer credit code includes a person organized pursuant to this chapter.

36. "Surplus" means the aggregate of the amount originally paid in as required by section 524.401, subsection 3, any amounts transferred to surplus pursuant to section 524.405 and any amounts subsequently designated as such by action of the board of directors of the state bank.

37. "Trust company" means a business organization which is authorized to engage in trust business pursuant to section 524.1005. A bank lawfully exercising trust powers under the laws of this state or of the United States is not a trust company by reason of having authority to engage in trust business in addition to its general business.

38. "Undivided profits" means the accumulated undistributed net profits of a state bank, including any residue from the fund established pursuant to section 524.401, subsection 3, after:

a. Payment or provision for payment of taxes and expenses of operations.

b. Transfers to reserves allocated to a particular asset or class of assets.

c. Losses estimated or sustained on a particular asset or class of assets in excess of the amount of reserves allocated therefor.

d. Transfers to surplus and capital.

e. Amounts declared as dividends to shareholders.

39. "Unincorporated area" means a village within which a state bank or national bank has its principal place of business.

95 Acts, ch 148, §1-3
 NEW subsections 3, 10, 12, 15, 16, 17, 20, 25, 26, 28, 29, and 32
 Former subsections 3-8 renumbered as 4-9
 Subsection 8 amended
 Former subsections 9-12 renumbered as 11, 13, 14, and 18
 Subsection 18 amended
 Former subsections 13-15 renumbered as 19, 21, and 22
 Subsection 22 amended
 Former subsections 16-18 renumbered as 23, 24, and 27
 Subsection 27 amended
 Former subsection 19 stricken
 Former subsections 20-22 renumbered as 30, 31, and 33
 Subsection 33 amended
 Former subsections 23-27 renumbered as 34-38
 Subsections 36-38 amended
 Former subsection 28 renumbered as 39

524.104 Rules of construction.

In the interpretation and construction of this chapter:

1. Transactions or acts validly entered into or performed before July 1, 1995, and the rights, duties and interests flowing from them remain valid on and after July 1, 1995, and may be completed or terminated according to their terms and as permitted by any statute repealed or amended by this chapter, as though such repeal or amendment had not occurred.

2. All individuals who, on July 1, 1995, hold any office under a provision of law repealed by this chapter, and which offices are continued by this chapter shall continue to hold such offices according to their former tenure.

95 Acts, ch 148, §4
 Section amended

524.105 Effect on existing banks.

1. The corporate existence of a state bank existing and operating on July 1, 1995, is not affected by the amendment of this chapter.

2. All state banks are subject to the provisions and requirements of this chapter in every particular, and all national banks, now or hereafter doing business in this state, are subject to the provisions of this chapter, to the extent applicable, from July 1, 1995.

95 Acts, ch 148, §5
 Section amended

524.106 Renewal of the corporate existence of an existing state bank. Repealed by 95 Acts, ch 148, § 135. See § 524.314.

524.107 Persons authorized to engage in banking business — educational bank.

1. A person, other than a state bank which is subject to the provisions of this chapter and a national bank authorized by the laws of the United States to engage in the business of receiving money for deposit, shall not engage in this state in the business of receiving money for deposit, transact the business of banking, or establish in this state a place of business for such purpose.

2. A person doing business in this state shall not use the words "bank" or "trust" or use any derivative, plural, or compound of the words "bank", "banking", "bankers", or "trust" in any manner which would tend to create the impression that the person is authorized to engage in the business of banking or to act in a fiduciary capacity, except a state bank authorized to do so by this chapter, a national bank to the extent permitted by the laws of the United States, a state association pursuant to section 534.507, or a federal association to the extent permitted by the laws of the United States, or, insofar as the word "trust" is concerned, an individual permissibly serving as a fiduciary in this state, pursuant to section 633.63, or, insofar as the words "trust" and "bank" are concerned, a nonresident corporate fiduciary permissibly serving as a fiduciary in this state pursuant to section 633.64.

3. Notwithstanding subsections 1 and 2, an organization formed for educational purposes in association with an accredited school which engages in

the receipt of deposits of no more than twenty dollars per depositor, may use the words "educational bank", the use of which is otherwise restricted in subsection 2, and such an educational bank is not a bank within the meaning or scope of regulation of this chapter.

95 Acts, ch 148, §6
Subsection 1 amended

524.109 Bankers' bank authorized — authority to hold shares of bankers' bank.

1. A state bank may be organized under this chapter as a bankers' bank. The bankers' bank is subject to all rights, privileges, duties, restrictions, penalties, liabilities, conditions and limitations applicable to a state bank generally, except as limited in the definition of bankers' bank contained in section 524.103, subsection 9. However, a bankers' bank shall have the same powers as those granted by federal law and regulation to a national bank organized as a bankers' bank under 12 U.S.C. § 27.

2. A state bank shall have the power to acquire and hold the shares in one or more bankers' banks or bank holding companies which own a bankers' bank in a total amount not to exceed five percent of the state bank's aggregate capital. A state bank shall not own, directly or indirectly, more than five percent of any class of voting shares of a bankers' bank.

95 Acts, ch 148, §7
Section amended

524.201 Superintendent of banking.

1. The governor shall appoint, subject to confirmation by the senate, a superintendent of banking. The appointee shall be selected solely with regard to qualification and fitness to discharge the duties of office, and a person shall not be appointed who has not had at least five years' experience as an executive officer in a bank or in the regulation or examination of banks.

2. The superintendent shall have an office at the seat of government. The regular term of office shall be four years beginning and ending as provided by section 69.19.

95 Acts, ch 148, §8
Subsection 1 amended

524.202 Superintendent — salary.

The superintendent shall receive a salary to be fixed by the governor.

95 Acts, ch 148, §9
Section amended

524.204 Deputy superintendent of banking.

1. The superintendent shall appoint a deputy superintendent of banking, who shall assist the superintendent in the performance of the superintendent's duties and who shall perform the duties of the superintendent during the absence or the inability of the superintendent, and as directed by the superintendent.

2. The deputy superintendent shall be removable at the pleasure of the superintendent. If the office of

the superintendent becomes vacant, the deputy superintendent shall have all the powers and duties of the superintendent until a new superintendent is appointed by the governor in accordance with the provisions of this chapter.

3. The deputy superintendent shall receive a salary to be fixed as provided in section 524.208.

95 Acts, ch 148, §10
Section amended

524.211 Prohibitions relating to superintendent, deputy superintendent, assistants and examiners.

1. The superintendent, deputy superintendent, an assistant to the superintendent, a bank examination analyst, general counsel, or an examiner assigned to the bank bureau of the banking division is prohibited from obtaining a loan of money or property from a state-chartered bank or any person or entity affiliated with a state-chartered bank.

2. The superintendent, deputy superintendent, finance company bureau chief, and all examiners assigned to the finance company bureau are prohibited from obtaining a loan of money or property from a finance company licensed by the banking division.

3. The superintendent, deputy superintendent, an assistant to the superintendent, a bank examination analyst, finance company bureau chief, general counsel, or an examiner of the banking division who has credit relations with a mortgage banking company or credit card company licensed by the banking division is prohibited from participating in decisions, oversight, and official review of matters concerning the regulation of the mortgage banking company or credit card company with which such person has credit relations.

4. An assistant to the superintendent, a bank examination analyst, general counsel, or an examiner assigned to the bank bureau of the banking division who has credit relations with a finance company licensed by the banking division is prohibited from participating in decisions, oversight, and official review of matters concerning the regulation of the finance company with which such person has credit relations.

5. An employee of the banking division, other than the superintendent or a member of the state banking board, shall not perform any services for, and shall not be a shareholder, member, partner, owner, director, officer, or employee of, any enterprise, person, or affiliate subject to the regulatory purview of the banking division.

6. For the purposes of this section and section 524.212, an affiliate of a person other than a state bank shall include any corporation, trust, estate, association or other similar organization:

a. Of which such person, directly or indirectly, owns or controls either a majority of the voting shares or more than fifty percent of the number of shares voted for the election of its directors, trustees, or other individuals exercising similar functions at the preceding election, or controls in any manner the

election of a majority of its directors, trustees or other individuals exercising similar functions.

b. Of which control is held, directly or indirectly, through share ownership or in any other manner, by the shareholders of such person who own or control either a majority of the shares of such person or more than fifty percent of the number of shares voted for the election of directors of such person at the preceding election or by trustees for the benefit of the shareholders of any such person.

c. Of which a majority of its directors, trustees, or other individuals exercising similar functions are directors of any one such person.

d. Which owns or controls, directly or indirectly, either a majority of the voting shares of such person or more than fifty percent of the total number of shares voted for the election of directors of such person at the preceding election, or controls in any manner the election of a majority of the directors of such person, or for the benefit of whose shareholders or members all or substantially all of the outstanding voting shares of such person is held by trustees.

7. The superintendent, deputy superintendent, or any assistant or examiner who is convicted of a felony while holding such position shall be immediately discharged from employment and shall be forever disqualified from holding any position in the banking division.

95 Acts, ch 148, §11-13
Subsections 1 and 2 stricken and rewritten
NEW subsections 3, 4 and 5 and former subsections 3 and 4 renumbered as 6 and 7
Subsection 7 amended

524.212 Prohibition against disclosure of regulatory information.

The superintendent, deputy superintendent, assistant to the superintendent, examiner, or other employee of the banking division shall not disclose, in any manner, to any person other than the person examined and those regulatory agencies referred to in section 524.217, subsection 2, any information relating specifically to the supervision and regulation of any state bank, persons subject to the provisions of chapter 533A, 533B, 536, or 536A, any affiliate of any state bank, or an affiliate of a person subject to the provisions of chapter 533A, 533B, 536, or 536A, except when ordered to do so by a court of competent jurisdiction and then only in those instances referred to in section 524.215, subsections 1, 2, 3, and 5.

95 Acts, ch 148, §14
Section stricken and rewritten

524.215 Records of division of banking.

All records of the division of banking shall be public records subject to the provisions of chapter 22, except that all papers, documents, reports, reports of examinations and other writings relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state shall not be public records and shall not be open for examination or copying by the public or for examination or publication by the news media.

The superintendent, deputy superintendent, assistants, or examiners shall not be subpoenaed in any cause or proceeding to give testimony concerning information relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state, and the records of the banking division which relate specifically to the supervision and regulation of any such state bank or other such person shall not be offered in evidence in any court or subject to subpoena by any party except, where relevant:

1. In such actions or proceedings as are brought by the superintendent.

2. In any matter in which an interested and proper party seeks review of a decision of the superintendent.

3. In any action or proceeding which arises out of the criminal provisions of the laws of this state or the United States.

4. In any action brought as a shareholders derivative suit against a state bank.

5. In any action brought to recover moneys the loss of which was a result of embezzlement, misappropriation, or misuse of state bank funds by a director, officer, or employee of the state bank.

95 Acts, ch 148, §15
Section amended

524.217 Examinations.

1. The superintendent may do all of the following:

a. Make or cause to be made an examination of every state bank and trust company whenever in the superintendent's judgment such examination is necessary or advisable, but in no event less frequently than once during each two-year period. During the course of each examination of a state bank or trust company, inquiry shall be made as to its financial condition, the security afforded to those to whom it is obligated, the policies of its management, whether the requirements of law have been complied with in the administration of its affairs, and such other matters as the superintendent may prescribe.

b. Make or cause to be made such limited examinations at such times and with such frequency as the superintendent deems necessary and advisable to determine the condition of any state bank or trust company and whether any person has violated any of the provisions of this chapter.

c. Make or cause to be made an examination of any corporation in which the state bank or trust company owns shares.

d. Upon application to and order of the district court of Polk county, make or cause to be made an examination of any person having business transactions or a relationship with any state bank or trust company when such examination is deemed necessary and advisable in order to determine whether the capital of the state bank or trust company is impaired or whether the safety of its deposits has been imperiled. The fee for any such examination shall be paid by the state bank or trust company.

e. To the extent necessary for the purpose of any examination provided for by this section and section

524.1105, examine all relevant books, records, accounts, and documents and compel the production of the same in the manner prescribed by section 524.214.

2. The superintendent may furnish to the federal deposit insurance corporation, the federal reserve system, the office of the comptroller of the currency, the office of thrift supervision, national credit union administration, the federal home loan bank, and financial institution regulatory authorities of other states, or to any official or supervising examiner of such regulatory authorities, a copy of the report of any or all examinations made of any state bank and of any affiliate of a state bank.

3. A copy of the report of each examination of a state bank or trust company shall be transmitted by the superintendent to the board of directors of the state bank or trust company except to the extent that the report of any such examination may be confidential to the superintendent, and each member of the board of directors shall furnish to the superintendent, on forms to be supplied by the superintendent, a statement that the member has read the report of examination.

4. All reports of examinations, including any copies of such reports, in the possession of any person other than the superintendent or employee of the banking division, including any state bank or any agency to which any report of such examination may be furnished under subsection 2, shall be confidential communications, shall not be subject to subpoena from such persons, and shall not be published or made public by such persons.

5. The report of examination of any affiliate or of any person examined as provided for in subsection 1, paragraph "c" or "d", shall not be transmitted by the superintendent to any such affiliate or person or to any state bank or trust company or to the board of directors of any state bank or trust company unless authorized or requested by such affiliate or person.

95 Acts, ch 148, §16
Section amended

524.219 Fees.

A state bank subject to examination, supervision, and regulation by the superintendent, shall pay to the superintendent fees, established by the state banking board, based on the costs and expenses incurred in the discharge of the duties imposed upon the superintendent by this chapter. The fees shall include, but are not limited to, costs and expenses for salaries, expenses and travel for employees, office facilities, supplies, and equipment.

The fees for examination of any affiliate of a state bank as provided for in section 524.1105, and the examinations provided for in section 524.217, subsection 1, paragraphs "c" and "d", shall be established by the state banking board, based on the time required for the examination and the administrative costs and expenses incurred in the discharge of the duties imposed upon the superintendent by this chapter. The fees shall include, but not be limited to,

costs and expenses for salaries, expenses and travel for employees, office facilities, supplies, and equipment.

Upon completion of each examination required or allowed by this chapter, the examiner in charge of the examination shall render a bill for the fees, in duplicate, and shall deliver one copy of the bill to the state bank and one copy to the superintendent.

Failure to pay the amount of the fees to the superintendent within ten days after the date of billing shall subject the state bank to an additional charge equal to five percent of the amount of the fees for each day the payment is delinquent.

95 Acts, ch 148, §17
Section amended

524.220 Reports to superintendent.

1. A state bank shall render a full, clear, and accurate statement of its condition to the superintendent, on forms to be supplied by the superintendent, verified by the oath of an officer and attested by the signatures of at least three of the directors, or verified by the oath of two of its officers and attested by two of the directors. The superintendent may, in the superintendent's discretion, use any form of statement of condition that is used by the federal deposit insurance corporation or the federal reserve system.

2. The statement shall be transmitted to the superintendent within thirty days after the end of each calendar quarter.

3. The state bank shall cause the statement of condition filed for a calendar quarter which ends on June 30 to be published no later than the following August 15 and the statement of condition filed for a calendar quarter which ends on December 31 to be published no later than February 15 of the following year in a newspaper of general circulation in the municipal corporation or unincorporated area in which the state bank has its principal place of business, or if there is none, in a newspaper of general circulation published in the county, or in a county adjoining the county, in which the state bank has its principal place of business. Proof of such publication by affidavit of the publisher of the newspaper in which it was made, shall be delivered to the superintendent and is conclusive evidence of the fact.

4. The superintendent shall also have power to call for special reports from a state bank whenever in the superintendent's judgment the same are necessary in order to obtain a full and complete knowledge of its condition. Such reports shall be verified and attested in the same manner as required in subsection 1 of this section.

95 Acts, ch 148, §18
Subsections 2 and 3 amended

524.224 Grounds for management of state bank by superintendent.

The superintendent may take over the management of the property and business of a state bank whenever it appears to the superintendent that:

1. The state bank has violated its articles of incorporation or any law of this state.

2. The capital of the state bank is impaired.

3. The state bank is conducting its business in an unsafe or unsound manner.

4. The state bank is in such condition that it is unsound, unsafe or inexpedient for it to transact business.

5. The state bank has suspended or refused payment of its deposits or other liabilities contrary to the terms thereof.

6. The state bank refuses to make its records available to the superintendent for examination or otherwise refuses to make available, through an officer or employee having knowledge thereof, information required by the superintendent for the proper discharge of the duties of the superintendent's office.

7. The state bank neglects or refuses to observe any order of the superintendent made pursuant to the provisions of this chapter, unless the enforcement of such order is stayed in a proceeding brought by the state bank.

8. The state bank has not transacted any business or performed any of the duties, contemplated by its authorization to do business, for a period of one year.

9. The state bank has failed to renew its corporate existence in the manner provided for in section 524.314 within one hundred eighty days prior to the expiration thereof.

The superintendent shall thereafter manage the property and business of the state bank until such time as the superintendent may relinquish to the state bank the management thereof, upon such conditions as the superintendent may prescribe, or until its affairs be finally dissolved as provided in this chapter.

95 Acts, ch 148, §19
Subsection 9 amended

524.301 Incorporators.

A state bank may be incorporated under this chapter by one or more individuals eighteen years of age or older, a majority of whom shall be residents of this state and citizens of the United States.

95 Acts, ch 148, §20
Section amended

524.302 Articles of incorporation.

1. The articles of incorporation of a state bank, in the form prescribed by the superintendent, shall set forth the following:

a. The name of the state bank, that it is incorporated for the purpose of conducting the business of banking, and that it is incorporated under the provisions of this chapter.

b. The location of its proposed principal place of business including the name of the municipal corporation and county.

c. The duration of the state bank which shall be perpetual.

d. The aggregate number of common and preferred shares which the state bank shall have au-

thority to issue and the par value of such shares. If such shares are to be divided into classes or series, the number of shares of each class or series and a statement of the par value of the shares of each class or series.

e. The number of directors constituting the initial board of directors and the names and addresses of the individuals who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify.

f. The name and address of each incorporator.

g. The specific month in which the annual meeting of shareholders is to be held.

2. The articles of incorporation may set forth any or all of the following:

a. Provisions not inconsistent with law regarding:

(1) Managing the business and regulating the affairs of the corporation.

(2) Defining, limiting, and regulating the affairs of the corporation.

b. Any provision required or permitted by this chapter to be set forth in the bylaws.

c. A provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that the provision does not eliminate or limit the liability of a director for any breach of the director's duty of loyalty to the corporation or its shareholders, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, for any transaction from which the director derives an improper personal benefit, or under section 524.605, subsection 1 or 2. A provision shall not eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

3. The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter. The articles of incorporation shall be signed by all of the incorporators and acknowledged before an officer authorized to take acknowledgments of deeds.

95 Acts, ch 148, §21
Section amended

524.303 Application for approval.

The incorporators shall make an application to the superintendent for approval of a proposed state bank in the manner prescribed by the superintendent and shall deliver to the superintendent, together with such application:

1. The articles of incorporation.

2. Applicable fees, payable to the secretary of state as specified in section 490.122, for the filing and recording of the articles of incorporation.

95 Acts, ch 148, §22
Unnumbered paragraph 2 stricken

524.304 Publication of notice.

1. The incorporators of a state bank shall, within thirty days of the acceptance of the application for

processing, publish notice of the proposed incorporation once each week for two successive weeks in a newspaper of general circulation published in the municipal corporation which is proposed as the principal place of business of the state bank, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the proposed state bank is to have its principal place of business. The notice shall set forth all of the following:

- a. The name of the proposed state bank.
- b. A statement that it is to be incorporated under this chapter.
- c. The purpose or purposes of the state bank.
- d. The names and addresses of the incorporators and of the members of the initial board of directors as they appear, or will appear, in the articles of incorporation.
- e. The date the application was accepted for processing.
- f. If the incorporation of the state bank has been approved by the superintendent under section 524.305, subsection 8, the name and address of the bank with which the state bank will have merged, or the assets of which the state bank will have acquired or the condition of which in some other way provided a purpose for the incorporation.

2. Proof of publication of the notice by affidavit of the publisher of the newspaper in which the notice appears shall be filed with the superintendent and is conclusive evidence of the publication.

95 Acts, ch 148, §23
Section amended

524.305 Approval by superintendent.

1. Upon receipt of an application for approval of a state bank, the superintendent shall conduct an investigation as the superintendent deems necessary to ascertain whether:

- a. The articles of incorporation and supporting items satisfy the requirements of this chapter.
- b. The convenience and needs of the public will be served by the proposed state bank.
- c. The population density or other economic characteristics of the area primarily to be served by the proposed state bank afford reasonable promise of adequate support for the state bank.
- d. The character and fitness of the incorporators and of the members of the initial board of directors are such as to command the confidence of the community and to warrant the belief that the business of the proposed state bank will be honestly and efficiently conducted.

e. The capital structure of the proposed state bank is adequate in relation to the amount of the anticipated business of the state bank and the safety of prospective depositors.

f. The proposed state bank will have sufficient personnel with adequate knowledge and experience to conduct the business of the state bank, and to administer fiduciary accounts, if the state bank is to be authorized to act in a fiduciary capacity.

2. Within one hundred eighty days after the application is accepted for processing, the superintendent shall approve or disapprove the application on the basis of the investigation.

3. Within thirty days after the date of the second publication of the notice required under section 524.304, any interested person may submit written comments and information to the superintendent concerning the application. Comments challenging the legality of an application must be submitted separately in writing. The superintendent may extend the thirty-day comment period, if, in the judgment of the superintendent, extenuating circumstances which justify the extension exist.

4. Within thirty days after the date of the second publication of the notice required by section 524.304, any interested person may submit a written request of the superintendent for a hearing on the application. The request shall state the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation to the superintendent. If the reasons are related to factual disputes, the disputes shall be described. A written request for a hearing shall be evaluated by the superintendent, who may grant or deny the request in whole or in part. A hearing request shall generally be granted only if it is determined that written submissions would be inadequate or that a hearing would otherwise be beneficial to the decision-making process. A hearing may be limited to issues considered material by the superintendent.

5. If a request for a hearing is denied, the superintendent shall notify the applicant and all interested persons and shall state the reasons for the denial. An interested person may submit additional written comments or information on the application to the superintendent, with copies to the applicant at the time of submission to the superintendent, within fourteen days after the date of the notice of denial. The applicant shall be provided an additional seven days, after the fourteen-day deadline has expired, within which to respond to any comments submitted within the fourteen-day period after the notice of denial. The superintendent may waive this seven-day period if requested by the applicant. A copy of any response submitted by the applicant shall also be mailed by the applicant to the interested persons at the time the response is submitted to the superintendent.

6. If the superintendent approves the application, the superintendent shall notify the incorporators, and such other persons who requested in writing that they be notified, of the approval. If the superintendent disapproves the application, the superintendent shall notify the incorporators of the action and the reason for the decision.

7. The actions of the superintendent shall be subject to judicial review in accordance with chapter 17A. The court may award damages to the incorporators if it finds that review is sought frivolously or in bad faith.

8. Subsections 3, 4, and 5 shall not apply if the superintendent finds that one of the purposes of the proposed state bank is the merger with, or the purchase of some or all of the assets of and assumption of some or all of the liabilities of, a bank for which a receiver has been appointed or which has been ordered, by authorities of this state or the United States, to cease to carry on its business, or if the superintendent finds for any other reason that immediate action on the pending application is advisable in order to protect the interests of depositors or the assets of any other bank.

9. As a condition of receiving the decision of the superintendent with respect to the application the incorporators shall reimburse the superintendent for all expenses incurred by the superintendent in connection with the application.

95 Acts, ch 148, §24

Section amended and former subsections 4-7 renumbered as 6-9

524.306 Incorporation of state bank.

1. Unless a delayed effective date or time is specified, the corporate existence of a state bank begins when the articles of incorporation, with the superintendent's approval indicated on the articles of incorporation, are filed with the secretary of state. The secretary of state shall record the articles of incorporation and forward a copy of them to the county recorder of the county in which the state bank is to have its principal place of business.

2. The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation, except in a proceeding instituted by the superintendent to cancel or revoke the incorporation or involuntarily dissolve the corporation.

95 Acts, ch 148, §25

Section stricken and rewritten

524.307 Organization of state bank.

Upon incorporation of the state bank, the initial board of directors shall hold an organizational meeting within this state, at the call of a majority of the directors, to complete the organization of the state bank by electing officers, adopting bylaws, if any are to be adopted, and conducting any other business properly brought before the board at the meeting.

95 Acts, ch 148, §26

Section stricken and rewritten

524.308 Issuance of authorization to do business.

1. The state bank shall not accept deposits or transact any business except such business as is incident to commencement of business, or to the obtaining of subscriptions and payment for its shares until receipt of an authorization to do business from the superintendent. The superintendent shall issue an authorization to do business upon finding that the proposed state bank has complied with all the requirements of this chapter precedent to commencing business and has submitted to the superintendent a statement under oath, in the manner designated by

the superintendent, showing that the capital, surplus and undivided profits required by the superintendent in accordance with this chapter have been fully paid in.

2. If a state bank transacts any business before receipt of an authorization to do business in violation of subsection 1, the directors and officers who willfully authorized or participated in the action are severally liable for the debts and liabilities of the state bank incurred prior to the receipt of the authorization to do business.

95 Acts, ch 148, §27, 28

Subsection 1 stricken and former subsections 2 and 3 renumbered as 1 and 2

Subsection 2 amended

524.309 Publication of authorization to do business.

1. A state bank shall cause to be published once within two weeks after the issuance by the superintendent of the authorization to do business, in a newspaper of general circulation published in the municipal corporation which is the principal place of business of the state bank, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the state bank has its principal place of business, a notice which shall state all of the following:

a. The name of the state bank, the address of its principal place of business, and the date of the issuance of the authorization to do business.

b. The names and addresses of the members of the initial board of directors as designated in the articles of incorporation.

c. That the shareholders shall not be personally liable for the debts and obligations of the state bank.

2. Proof of publication, by affidavit of the publisher of the newspaper in which it was made, shall be filed with the superintendent, and is conclusive evidence of the fact.

95 Acts, ch 148, §29

Section amended

524.310 Name of state bank.

1. The name of a state bank originally incorporated after the effective date of this chapter shall include the word "bank" and may include the word "state" or "trust" in its name. A state bank using the word "trust" in its name must be authorized under this chapter to act in a fiduciary capacity.

2. The provisions of this section shall not require any state bank, existing and operating on January 1, 1970, to add to, modify or otherwise change its corporate name, either on January 1, 1970, or upon renewal of its corporate existence pursuant to section 524.314.

3. If a state bank existing and operating on January 1, 1970, causes its corporate name to be changed, the name as changed shall comply with subsection 1 of this section.

4. a. A person may reserve the exclusive use of a corporate name for a state bank by delivering an application to the secretary of state for filing. The application must set forth the name and address of

the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty day period.

b. The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

95 Acts, ch 148, §30
Subsections 1 and 2 amended

524.312 Location of state bank — exceptions.

1. A state bank originally incorporated pursuant to this chapter shall have its principal place of business within the city limits of a municipal corporation. The existence of a state bank shall not, however, be affected by the subsequent discontinuance of the municipal corporation. A state bank existing and operating on January 1, 1970, which does not have its principal place of business within the city limits of a municipal corporation, may renew its corporate existence pursuant to section 524.314 without regard to this section and may also operate as a bank or convert to and operate as a bank office when acquired by or merged into another state bank and approved by the superintendent.

2. A state bank may, with the prior written approval of the superintendent, change the location of its principal place of business to a new location. A change of location shall be limited to another location in the same municipal corporation, to a location in a municipal corporation in the same county, or to a location in a municipal corporation in a county that is contiguous to or touching or cornering on the county in which the state bank is located. If a state bank has its principal place of business in an unincorporated area, the superintendent may authorize a change of location of its principal place of business to a new location within the same unincorporated area as well as to any location referred to in this subsection.

3. If a change in the location of the principal place of business of a state bank is proposed, application for approval of the superintendent shall be made as required by the superintendent pursuant to this section. A change in location of the principal place of business of a state bank, including a change from one municipal corporation to another municipal corporation within an urban complex, requires an amendment to the articles of incorporation pursuant to sections 524.1502, 524.1504, and 524.1506. A state bank seeking approval of a change of location pursuant to this subsection shall publish once each week for two consecutive weeks a notice of the proposed change of location in a newspaper of general circulation in the municipal corporation or unincorporated area in which the state bank has its principal place of business, or if there is none, in a newspaper of general circulation in the county, or in a county adjoining the county, in which the state bank has its principal place of business, and in the municipal

corporation in which it seeks to establish its principal place of business, or if there is none, in a newspaper of general circulation in the county, or in a county adjoining the county, in which the municipal corporation is located. The notices shall be published within thirty days after the application to the superintendent for approval of the change in location is accepted for processing. The notice shall set forth the name of the state bank, the present location of its principal place of business, the location to which it proposes to move its principal place of business, and the date upon which the application was accepted for processing by the superintendent.

4. Within thirty days after acceptance of an application for approval of a change of location of the principal place of business of a state bank pursuant to subsection 3, the superintendent shall commence an investigation into the circumstances of the application as deemed necessary by the superintendent, giving due consideration to factors substantially similar to those set forth in section 524.305, subsection 1, paragraphs "c" through "f". Within one hundred eighty days after the application has been accepted for processing, the superintendent shall approve or disapprove the application on the basis of the investigation. The superintendent shall give written notice of the decision to the state bank, and in the event of disapproval a statement of the reasons for the disapproval. If the superintendent approves the change in location the superintendent shall deliver the articles of amendment to the secretary of state. As a condition of receiving the decision of the superintendent with respect to the application, the state bank shall reimburse the superintendent for all expenses incurred by the superintendent in connection with the application.

5. A state bank approved under the provisions of section 524.305, subsection 8, shall not commence its business at any location other than within a municipal corporation or unincorporated area in which was located the principal place of business or an office of the bank the condition of which was the basis for the superintendent authorizing incorporation of the new state bank.

95 Acts, ch 148, §31, 32
Subsections 1 and 2 amended
NEW subsections 3 and 4 and former subsection 3 renumbered as 5

524.313 Bylaws.

A state bank may adopt bylaws. The power to adopt, amend, or repeal bylaws or adopt new bylaws is vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the state bank not inconsistent with law or the articles of incorporation.

95 Acts, ch 148, §33
Section amended

524.314 Renewal of corporate existence of existing state bank.

1. The corporate existence of a state bank existing and operating on January 1, 1970, which expires

subsequent to that date, may be renewed prior to the expiration date of the corporate existence, following the affirmative vote of the holders of at least a majority of the shares entitled to vote on the renewal, at a meeting held for that purpose and called as provided by section 524.533, and delivery to the superintendent of the articles of incorporation together with the applicable filing and recording fees for the filing and recording. If the superintendent finds that the articles of incorporation satisfy the requirements of this section, the superintendent shall deliver them to the secretary of state for filing and recording in the secretary of state's office. Following the receipt of the articles of incorporation, the secretary of state shall proceed as provided in section 524.306.

2. Sections 524.303, 524.304, 524.305, 524.307, 524.308, and 524.309 are not applicable to a state bank existing and operating on January 1, 1970, which renews its corporate existence as provided in subsection 1.

3. The renewal of the corporate existence of a state bank pursuant to this section shall not affect any right accrued or established, or any liability or penalty incurred, under the laws of this state or of the United States, prior to the issuance of a certificate of incorporation by the secretary of state.

95 Acts, ch 148, §34
NEW section

524.401 Minimum capital.

1. The minimum capital of a state bank existing and operating on July 1, 1995, shall be as follows:

a. The amount required by subsection 2.

b. An amount less than that provided for under paragraph "a" which the state bank had on July 1, 1995, but not less than the minimum amount required by law prior to that date.

2. The minimum capital of a state bank originally incorporated pursuant to the provisions of this chapter shall not be less than the amount required by the federal deposit insurance corporation, or its successor, or a greater amount which the superintendent may deem necessary in view of the deposit potential of the state bank and current banking standards relating to total capital requirements.

3. A state bank originally incorporated pursuant to this chapter shall establish, prior to receiving authorization to do business from the superintendent, paid-in surplus and undivided profits as required by the superintendent.

95 Acts, ch 148, §35
Section amended

524.402 Surplus. Repealed by 95 Acts, ch 148, § 135. See § 524.401.

524.403 Undivided profits. Repealed by 95 Acts, ch 148, § 135. See § 524.401.

524.404 Capital notes and debentures.

1. A state bank, with the prior approval of the superintendent and the affirmative vote of the hold-

ers of a majority of the shares entitled to vote, may issue capital notes or debentures. The amounts, maturities, rate of interest, relative rights with other creditors, and other terms and conditions shall be set forth on the face of the capital notes or debentures or in an attendant agreement, and all terms and conditions are subject to the prior approval of the superintendent provided that all such capital notes and debentures shall be subordinated to the rights of other persons to the extent provided for in section 524.1312. The aggregate amount of all capital notes and debentures issued and outstanding pursuant to this section shall not exceed, at any one time, twenty-five percent of the aggregate capital of the state bank.

2. A state bank shall not make any payment of principal on any capital notes or debentures without the prior approval of the superintendent nor shall any payment of principal and interest be made on any such capital or debentures by a state bank when its capital is impaired or which would cause its capital to become impaired. Subject to the provisions of this section a state bank may issue capital notes or debentures with provision for installment or serial payment of capital notes or debentures according to an established schedule which shall be approved by the superintendent prior to issuance.

3. A state bank shall not issue capital notes or debentures within five years after it is originally authorized to do business.

95 Acts, ch 148, §36
Subsections 1 and 3 amended

524.405 Increase or decrease of capital structure.

1. A state bank, with the approval of the superintendent, may increase its capital structure or effect an allocation of amounts within its capital structure, by the use of any of the following methods:

a. Sale of authorized but unissued shares.

b. Transfer of surplus or undivided profits to capital for authorized but unissued shares.

c. Transfer of undivided profits to surplus.

d. Authorization and issuance of common shares, preferred shares, or capital notes or debentures.

2. The superintendent, whenever it appears necessary to do so in the interest of the safety of the deposits of a state bank, may require that the capital structure of the state bank be increased by either of the methods provided for in subsection 1, paragraphs "a" and "d".

3. Capital or surplus shall not be decreased except with the approval of the superintendent.

95 Acts, ch 148, §37
Section amended

524.501 through 524.517 Transferred to § 524.521, 524.523-524.525, 524.527, 524.528, 524.531-524.533, 524.535-524.539, and 524.541-524.543 respectively in Code Supplement 1995.

524.518 Redemption of preferred shares. Repealed by 95 Acts, ch 148, § 135.

524.519 and 524.520 Transferred to § 524.544 and 524.545 in Code Supplement 1995.

524.521 Authorized shares.

1. The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the state bank is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class. Prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section 524.523.

2. The articles of incorporation must authorize both of the following:

a. One or more classes of shares that together have unlimited voting rights.

b. One or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the state bank upon dissolution.

3. The articles of incorporation may authorize one or more classes of shares that have any of the following qualities:

a. Have special, conditional, or limited voting rights, or no right to vote, unless prohibited by this chapter.

b. Are redeemable or convertible as specified in the articles of incorporation in any of the following ways:

(1) At the option of the state bank, the shareholders, or another person or upon the occurrence of a designated event.

(2) For cash, indebtedness, securities, or other property.

(3) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events.

c. Preferred shares are redeemable only by resolution of the board of directors with the prior approval of the superintendent. Preferred shares which are redeemable according to the terms of their issuance shall be redeemed only in accordance with such terms. Preferred shares which are redeemed shall be canceled and shall not be reissued. Preferred shares which are not redeemable according to the terms of their issuance are redeemable only pro rata, by lot, or by such other equitable method as determined by the board of directors.

d. (1) If preferred shares are redeemed by a state bank, the redemption effects a cancellation of the shares, and a statement of cancellation shall be filed as provided in this paragraph. The filing of the statement of cancellation constitutes an amendment to the articles of incorporation and reduces the number of preferred shares of the class which the state bank is authorized to issue by the number which are canceled.

(2) The statement of cancellation shall be executed by the state bank by its president or a vice

president and by its cashier or an assistant cashier, and acknowledged by one of the officers signing such statement, and shall set forth all of the following:

(a) The name of the state bank and the effective date of its articles of incorporation.

(b) The number of preferred shares canceled through redemption, itemized by classes.

(c) The aggregate number of issued shares, itemized by classes, after giving effect to the cancellation.

(d) The amount, expressed in dollars, of the stated capital of the state bank after giving effect to the cancellation.

(e) The number of shares which the state bank has authority to issue, itemized by classes, after giving effect to the cancellation.

(3) The statement of cancellation, together with the applicable filing and recording fees, shall be delivered to the superintendent who shall, if the superintendent finds the statement of cancellation satisfies the requirements of this section, deliver it to the secretary of state for filing and recording in the secretary of state's office and the statement of cancellation shall also be filed and recorded in the office of the county recorder. The capital of the state bank is deemed to be reduced by the par value of the shares canceled upon the effective date of the redemption.

e. Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative.

f. Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the state bank.

4. The description of the designations, preferences, limitations, and relative rights of share classes in subsection 3 is not all-inclusive.

5. Unless the articles of incorporation or bylaws otherwise provide, the board of directors, by resolution duly adopted and with the approval of the superintendent as provided in section 524.405, may issue from time to time, in whole or in part, the shares authorized by the articles of incorporation.

95 Acts, ch 148, §38

Section stricken and rewritten

Transferred from §524.501 in Code Supplement 1995

524.522 Terms of class or series determined by board of directors.

1. If the articles of incorporation provide for such, the board of directors may determine, in whole or in part, the preferences, limitations, and relative rights, within the limits set forth in section 524.521, of either of the following:

a. A class of shares before the issuance of any shares of that class.

b. One or more series within a class before the issuance of any shares of that series.

2. Each series of a class must be given a distinguishing designation.

3. All shares of a series must have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the

extent otherwise provided in the description of the series, with those of other series of the same class.

4. Before issuing any shares of a class or series created under this section, the state bank shall deliver to the superintendent for filing with the secretary of state articles of amendment on forms prescribed by the superintendent, which are effective without shareholder action, that set forth all of the following:

- a. The name of the state bank and the effective date of its articles of incorporation.
- b. The text of the amendment determining the terms of the class or series of shares.
- c. The date it was adopted.
- d. A statement that the amendment was duly adopted by the board of directors.

95 Acts, ch 148, §39
NEW section

524.523 Certificates representing shares.

1. The shares of a state bank shall be represented by certificates signed by such officers, employees, or agents as are authorized by the articles of incorporation or bylaws to sign. If no contrary provisions are made in the articles of incorporation or bylaws, the certificates shall be signed by the president or a vice president and the cashier or an assistant cashier of the state bank.

2. Each share certificate must state on its face, at a minimum, all of the following:

- a. The name of the issuing state bank and that it is organized under the laws of this state.
- b. The name of the person to whom issued.
- c. The number and class of shares and the designation of the series, if any, which the certificate represents.
- d. The par value of each share represented by the certificate.

3. A state bank which is authorized to issue different classes of shares or different series within a class must do one of the following:

- a. Summarize on the front or back of each certificate the designations, relative rights, preferences, and limitations applicable to each class; the variations in rights, preferences, and limitations determined for each series; and the authority of the board of directors to determine variations for future series.
- b. State conspicuously on the front or back of each certificate that the state bank will furnish the shareholder this information on request in writing and without charge.

4. Each share certificate must be signed either manually or in facsimile by two officers as set forth in subsection 1, and may bear the corporate seal or its facsimile.

5. If the person who signed a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

6. A certificate shall not be issued for any share until such share is fully paid.

95 Acts, ch 148, §40
Section amended
Transferred from §524.502 in Code Supplement 1995

524.524 Consideration for shares.

Except in the case of a distribution of shares authorized by section 524.543 or shares issued upon exchanges or conversion, common or preferred shares of a state bank may be issued only for cash in an amount not less than that determined by the superintendent.

95 Acts, ch 148, §41
Section amended
Transferred from §524.503 in Code Supplement 1995

524.525 Subscription for shares before incorporation.

1. A subscription for shares entered into before incorporation of the state bank is irrevocable for six months unless the subscription agreement provides a longer or shorter period, or all subscribers agree to revocation.

2. The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation of the state bank unless the subscription agreement specifies the terms. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

3. Shares issued pursuant to subscriptions entered into before incorporation of the state bank are fully paid and nonassessable when the state bank receives the consideration specified in the subscription agreement.

4. If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation of the state bank, the state bank may do either of the following:

- a. Collect the amount owed as any other debt.
- b. Unless the subscription agreement provides otherwise, the state bank may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty days after the state bank sends written demand for payment to the subscriber.

95 Acts, ch 148, §42
Section stricken and rewritten
Transferred from §524.504 in Code Supplement 1995

524.526 Fractional shares.

1. A state bank may do any of the following:

- a. Issue fractions of a share or pay in money the value of fractions of a share.
- b. Arrange for disposition of fractional shares by the shareholders of the state bank.
- c. Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

2. Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by section 524.523, subsection 2.

3. The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the state bank upon liquidation, but only if the scrip provides for such rights.

4. The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including either of the following:

a. That the scrip will become void if not exchanged for full shares before a specified date.

b. That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scrip holders.

95 Acts, ch 148, §43
NEW section

524.527 Liability of shareholders.

1. A purchaser of the shares of a state bank is not liable to the bank, its creditors, or depositors with respect to the shares except to pay the consideration for which the shares were authorized to be issued under section 524.521, or the consideration specified in the subscription agreement authorized under section 524.525.

2. Unless otherwise provided in the articles of incorporation, a shareholder of a state bank is not personally liable for the acts or debts of the state bank.

95 Acts, ch 148, §44
Section stricken and rewritten
Transferred from §524.505 in Code Supplement 1995

524.528 Shareholders' preemptive rights.

1. Unless otherwise provided in section 524.529, the shareholders of a state bank do not have a preemptive right to acquire the state bank's unissued shares except to the extent provided in the articles of incorporation.

2. A statement included in the articles of incorporation that "the state bank elects to have preemptive rights", or words of similar import, means that, except to the extent otherwise expressly provided in the articles of incorporation, the following principles apply:

a. A shareholder of a state bank has a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire a proportional amount of the state bank's unissued shares upon the decision of the board of directors to issue such shares.

b. A shareholder may waive the shareholder's preemptive right. A waiver evidenced in writing is irrevocable even though it is not supported by consideration.

c. There is no preemptive right with respect to any of the following:

(1) Shares issued as compensation to directors, officers, agents, or employees of the state bank, its subsidiaries, or its affiliates.

(2) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the state bank, its subsidiaries, or its affiliates.

(3) Shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation.

d. A holder of shares of any class without general voting rights but with preferential rights to distributions or assets has no preemptive rights with respect to shares of any class.

e. A holder of shares of any class with general voting rights but without preferential rights to distributions or assets has no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

f. Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

3. For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

95 Acts, ch 148, §45
Section stricken and rewritten
Transferred from §524.506 in Code Supplement 1995

524.529 Preemptive rights for existing state banks.

Notwithstanding contrary provisions of this chapter, a state bank which was incorporated under this chapter prior to July 1, 1995, shall be governed by the following until July 1, 1998:

1. Except to the extent limited or denied by this section or by the articles of incorporation, shareholders have a preemptive right to acquire unissued shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares.

2. Unless otherwise provided in the articles of incorporation:

a. No preemptive right exists with respect to either of the following:

(1) Acquiring any shares issued to directors, officers, or employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote or when authorized by and consistent with a plan approved by such vote of the shareholders.

(2) Acquiring treasury shares of the state bank pursuant to section 524.530.

b. A holder of shares of any class that is preferred or limited as to dividends or assets is not entitled to any preemptive right.

c. A holder of shares of common stock is not entitled to any preemptive right to shares of any class that is preferred or limited as to dividends or assets or to any obligations, unless convertible into shares of common stock or carrying a right to subscribe to or acquire shares of common stock.

d. A holder of common stock without voting power has no preemptive right to shares of common stock with voting power.

e. A preemptive right is only an opportunity to acquire shares or other securities under the terms and conditions as fixed by the board of directors for the purpose of providing a fair and reasonable opportunity for the exercise of the preemptive right.

95 Acts, ch 148, §46
NEW section

524.530 State bank's acquisition of its own shares.

1. With the prior approval of the superintendent, a state bank may acquire its own shares. Shares acquired pursuant to this section constitute authorized but unissued shares except as provided in subsection 2.

2. If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

95 Acts, ch 148, §47
NEW section

524.531 Loaning on its own shares.

A state bank shall not make any loan or extension of credit on the security of the shares of its own capital, unless such security is necessary to prevent loss upon a debt previously contracted in good faith.

95 Acts, ch 148, §48
Section amended

Transferred from §524.507 in Code Supplement 1995

524.532 Meetings of shareholders.

Meetings of shareholders may be held at a place, within this state, as provided in the articles of incorporation or the bylaws, or as fixed in accordance with their provisions. In the absence of any such provision, all meetings shall be held at the principal place of business of the state bank. An annual meeting of the shareholders shall be held during the specific month as shall be provided in the articles of incorporation, at the date and time as stated in or fixed in accordance with the bylaws. Failure to hold the annual meeting during the month shall not work a forfeiture or dissolution of the state bank. Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting, or other officers or persons as provided in the articles of incorporation or the bylaws.

Transferred from §524.508 in Code Supplement 1995

524.533 Notice of shareholder meetings — waiver of notice generally.

1. Written notice stating the place, day and hour of a meeting of the shareholders and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the cashier, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at the meeting. If mailed, the notice

is deemed to be delivered when deposited in the United States mail addressed to the shareholder at the shareholder's address as it appears on the stock transfer books of the state bank with postage prepaid.

2. A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the state bank for inclusion in the minutes or filing with the corporate records.

3. A shareholder's attendance at a meeting results in both of the following:

a. Waives the shareholder's objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting or promptly upon the shareholder's arrival objects to holding the meeting or transacting business at the meeting.

b. Waives the shareholder's objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

4. Unless the articles of incorporation or bylaws provide otherwise, the shareholders may permit any or all shareholders to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder participating in a meeting as provided in this subsection is deemed to be present in person at the meeting.

95 Acts, ch 148, §49
Section amended

Transferred from §524.509 in Code Supplement 1995

524.534 Action without meeting.

1. Unless the articles of incorporation or bylaws provide otherwise, action required or permitted to be taken under this chapter at a special shareholders' meeting may be taken without a meeting if the action is consented to by all shareholders. The action must be evidenced by one or more written consents describing the action taken, signed by each shareholder, and included in the minutes or filed with the corporate records reflecting the action taken.

2. Action taken under this section is effective when the last shareholder signs the consent, unless the consent specifies a different effective date.

3. A written consent signed under this section has the effect of a meeting vote and may be described as such in any document.

95 Acts, ch 148, §50
NEW section

524.535 Transfer books — fixing record date.

The board of directors of a state bank shall cause adequate stock transfer books to be maintained.

The bylaws or, in the absence of an applicable bylaw, the board of directors may fix, in advance, a date as the record date for any determination of shareholders entitled to notice of or to vote at a

meeting of shareholders, the date to be not more than seventy days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring the determination of shareholders, is to be taken. If a record date is not fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for the determination of shareholders. If a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, the determination applies to any adjournment of the meeting.

95 Acts, ch 148, §51
Section amended
Transferred from §524.510 in Code Supplement 1995

524.536 Voting list.

The officer or agent having charge of the stock transfer books for shares of a state bank shall, at least ten days before each meeting of shareholders, make a complete list of the shareholders entitled to vote at the meeting or any adjournment of the meeting, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten days prior to the meeting, shall be kept on file at the principal place of business of the state bank and is subject to inspection by a shareholder, or a shareholder's agent or attorney, at any time during usual business hours. The list of shareholders shall also be produced and kept open at the time and place of the meeting and is subject to the inspection of a shareholder, or a shareholder's agent or attorney, during the whole time of the meeting. The original stock transfer books are prima facie evidence as to who are the shareholders entitled to examine the list or transfer books or to vote at a meeting of shareholders. Failure to comply with the requirements of this section shall not affect the validity of action taken at a meeting of shareholders.

95 Acts, ch 148, §52
Section amended
Transferred from §524.511 in Code Supplement 1995

524.537 Quorum of shareholders.

1. Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, constitutes a quorum at a meeting of shareholders. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by the laws of this state or of the United States or by the articles of incorporation or bylaws.

2. Once a share is represented for any purpose at a meeting, it is deemed present for the purpose of determining a quorum for the remainder of the meeting and for any adjournment of that meeting unless

a new record date is or must be set for that adjourned meeting.

95 Acts, ch 148, §53
Section amended
Transferred from §524.512 in Code Supplement 1995

524.538 Voting of shares.

1. Each outstanding share shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of a class or series may be limited or denied by the articles of incorporation.

2. Shares of a state bank purchased or acquired by such state bank pursuant to this chapter shall not be voted at any meeting and shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite number of shares.

3. A shareholder may vote either in person or by proxy executed in writing by the shareholder or by the shareholder's duly authorized attorney in fact. A proxy shall not be valid after eleven months from the date of its execution.

4. At each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by the shareholder for as many individuals as there are directors to be elected and for whose election the shareholder has a right to vote.

5. In an election of directors, a state bank shall not vote its own shares held by it as sole trustee unless under the terms of the trust the manner in which such shares shall be voted may be determined by a donor or beneficiary of the trust and unless such donor or beneficiary actually directs how the shares shall be voted. However, shares held in trust by a state bank pursuant to an instrument in effect prior to January 1, 1970, under the terms of which the manner in which such shares shall be voted could not be determined by a donor or beneficiary of the trust, may be voted in an election of directors of a state bank upon petition filed by the state bank, to a court of competent jurisdiction, and the appointment by such court of an individual to determine the manner in which the shares shall be voted. When the shares of a state bank are held by such state bank and one or more persons as trustees, the shares may be voted by such other person or persons as trustees, in the same manner as if the person or persons were the sole trustee. Whenever shares cannot be voted by reason of being held by a state bank as sole trustee, the shares shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite number of shares.*

95 Acts, ch 148, §54
*See §633.699
Section amended
Transferred from §524.513 in Code Supplement 1995

524.539 Voting trust.

Any number of shareholders of a state bank may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to

exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the state bank at its principal place of business, by delivery of a copy of the voting trust agreement to the superintendent and by transferring their shares to such trustee or trustees for the purposes of the agreement. The counterpart of the voting trust agreement so deposited with the state bank is subject to examination for any proper purpose during usual business hours by a shareholder of the state bank, in person or by agent or attorney, or by any holder of a beneficial interest in the voting trust, in person or by agent or attorney.

This section shall not affect the validity of any agreement, relative to the voting of shares, in effect prior to July 1, 1995.

95 Acts, ch 148, §55
Section amended
Transferred from §524.514 in Code Supplement 1995

524.540 Voting agreements.

1. Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to section 524.539.

2. A voting agreement created under this section is subject to a judicial order for specific enforcement.

95 Acts, ch 148, §56
NEW section

524.541 Lists — filing with superintendent.

Every state bank shall cause to be kept a full and correct list of the names and addresses of the officers, directors, and shareholders of the state bank, and the number of shares held by each. The list shall be subject to public inspection during usual business hours. If an affiliate, as defined in subsection 4 of section 524.1101 is a shareholder in a state bank, such list shall include the names, addresses, and percentage of ownership or interest in the affiliate of the shareholders, members or other individuals possessing a beneficial interest in said affiliate.

A copy of the list as of the date of the adjournment of each annual meeting of shareholders, in the form of an affidavit signed by the president or cashier of the state bank, shall be transmitted to the superintendent within ten days after such annual meeting.

Transferred from §524.515 in Code Supplement 1995

524.542 Dividends.

1. The board of directors of a state bank may, from time to time, declare, and the state bank may pay, dividends on its outstanding shares subject to the restrictions of this chapter and to the restrictions, if any, in its articles of incorporation. Dividends may be declared and paid only out of undivided profits and may be paid in cash or property.

2. A dividend shall not be declared or paid if restricted by the superintendent.

95 Acts, ch 148, §57
Section 2 amended
Transferred from §524.516 in Code Supplement 1995

524.543 Distribution of shares of state bank.

1. The board of directors of a state bank may, subject to the provisions of section 524.405, distribute pro rata to holders of common shares authorized but unissued common shares of the state bank.

2. A distribution shall not be made in authorized but unissued shares of the state bank unless an amount equal to the total par value of the shares distributed is transferred to capital.

95 Acts, ch 148, §58
Subsection 2 amended
Transferred from §524.517 in Code Supplement 1995

524.544 Change of control — certificate of approval — shares as security — reports.

1. Whenever any person proposes to purchase or otherwise acquire directly or indirectly any of the outstanding shares of a state bank, and the proposed purchase or acquisition would result in control or in a change in control of the bank, the person proposing to purchase or acquire the shares shall first apply in writing to the superintendent for a certificate of approval for the proposed change of control. The superintendent shall grant the certificate if the superintendent is satisfied that the person who proposes to obtain control of the bank is qualified by character, experience and financial responsibility to control and operate the bank in a sound and legal manner, and that the interests of the depositors, creditors and shareholders of the bank, and of the public generally, will not be jeopardized by the proposed change of control. If the proposed purchaser or acquirer is a bank holding company as defined by section 524.1801, it shall comply with section 524.1804 in lieu of seeking a certificate of approval under this subsection. In any situation where the president or cashier of a bank has reason to believe any of the foregoing requirements have not been complied with, it shall be the duty of the president or cashier to promptly report in writing such facts to the superintendent upon obtaining knowledge thereof. As used in this section, the term control means the power, directly or indirectly, to elect the board of directors. If there is any doubt as to whether a change in the ownership of the outstanding shares is sufficient to result in control thereof, or to effect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the superintendent.

2. Whenever twenty-five percent or more of the outstanding voting shares of a state bank is used as security for any transaction, the person or persons owning such shares shall promptly report such transaction to the superintendent in writing.

3. The reports required by subsections 1 and 2 of this section shall contain information (to the extent known by the person making the report) relative to the number of shares involved, the names of the sellers and purchasers (or transferors and transferees), the purchase price, the name of the borrower, the amount, source, and terms of the loan, or other transaction, the name of the bank issuing the shares used as security, and the number of shares used as security.

4. The superintendent may require, at such times as the superintendent deems appropriate, the submission of a financial statement from a shareholder or shareholders of a state bank possessing, directly or indirectly, control of such state bank.

Transferred from §524.519 in Code Supplement 1995

524.545 Options for shares.

A state bank may authorize the granting of options to officers and employees to purchase unissued shares of the state bank in accordance with a plan approved by the superintendent.

95 Acts, ch 148, §59

Section amended

Transferred from §524.520 in Code Supplement 1995

524.601 Board of directors.

1. The business and affairs of a state bank shall be managed by a board of five or more directors eighteen years of age or older, a majority of whom shall be residents of the state of Iowa and citizens of the United States.

2. The number of directors may be increased, or decreased to a number not less than five, by the shareholders at the annual meeting, or at a special meeting called for that purpose, but no decrease shall have the effect of shortening the term of an incumbent director.

95 Acts, ch 148, §60

Subsection 1 amended

524.602 Board of directors — election.

At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting. Directors shall hold office for one year or until their successors have been elected and qualified, unless removed in accordance with provisions of section 524.606. When the shareholders determine the number of directors at an annual meeting or at a special meeting, they shall, at the same meeting, elect a director to fill each directorship.

95 Acts, ch 148, §61

Section amended

524.604 Duties and responsibilities.

The duties and responsibilities of a director or of the board of directors shall include, but are not limited to, the following:

1. Attendance at no less than seventy-five percent of the regular board meetings held during the calendar year.

2. Employment of officer personnel, and determination of their compensation.

3. Periodic review of the original records of the state bank, or comprehensive summaries thereof prepared by the officers of the state bank, pertaining to loans, discounts, security interests and investments in bonds and securities.

4. Review of the adequacy of the bank's internal controls and determination of the most appropriate method to satisfy the bank's audit needs pursuant to section 524.608.

5. Periodic review of the utilization of security measures for the protection of the state bank and the maintenance of reasonable insurance coverage.

Directors of a state bank shall discharge the duties of their position in good faith and with that diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions. The directors shall have a continuing responsibility to assure themselves that the bank is being managed according to law and that the practices and policies adopted by the board are being implemented.

95 Acts, ch 148, §62

Subsections 1 and 4 amended

524.605 Liability of directors in certain cases.

In addition to any other liabilities imposed by law upon directors of a state bank:

1. Directors of a state bank who vote for or assent to the declaration of any dividend or other distribution of the assets of a state bank to its shareholders in willful or negligent violation of the provisions of this chapter or of any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the state bank for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or of the restrictions in the articles of incorporation.

2. The directors of a state bank who vote for or assent to any distribution of assets of a state bank to its shareholders during the dissolution of the state bank without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the state bank shall be jointly and severally liable to the state bank for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the state bank are not thereafter paid and discharged.

3. The directors of a state bank who, willfully or negligently, vote for or assent to loans or extensions of credit in violation of the provisions of this chapter, shall be jointly and severally liable to the state bank for the total amount of any loss sustained.

4. The directors of a state bank who, willfully or negligently, vote for or assent to any investment of funds of the state bank in violation of the provisions of this chapter shall be jointly and severally liable to the state bank for the amount of any loss sustained on such investment.

A director of a state bank who is present at a meeting of its board of directors at which action on any matter is taken shall be presumed to have assented to the action taken unless the director's dissent shall be entered in the minutes of the meeting or unless the director shall file the director's written dissent to such action with the individual acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the cashier of the state bank

promptly after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

A director shall not be liable under subsection 1, 2, 3, or 4 of this section if the director relied and acted in good faith upon information represented to the director to be correct by an officer or officers of such state bank or stated in a written report by a certified public accountant or firm of such accountants. No director shall be deemed to be negligent within the meaning of this section if the director in good faith exercised that diligence, care and skill which an ordinarily prudent person would exercise as a director under similar circumstances.

Any director against whom a claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a state bank and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of the provisions of this chapter, in proportion to the amounts received by them respectively. Further, any director against whom a claim shall be asserted pursuant to this section for the payment of any liability imposed by this section shall be entitled to contribution from any director found to be similarly liable.

Whenever the superintendent deems it necessary the superintendent may require, after affording an opportunity for a hearing upon adequate notice, that a director or directors whom the superintendent reasonably believes to be liable to a state bank pursuant to subsection 1, 2, 3, or 4 of this section, to place in an escrow account in an insured bank located in this state, as directed by the superintendent, an amount sufficient to discharge any liability which may accrue pursuant to subsection 1, 2, 3, or 4 of this section. The amount so deposited shall be paid over to the state bank by the superintendent upon final determination of the amount of such liability. Any portion of the escrow account which is not necessary to meet such liability shall be repaid on a pro rata basis to the directors who contributed to the fund.

Any action seeking to impose liability under this section, other than liability for contribution, shall be commenced only within five years of the action complained of and not thereafter.

95 Acts, ch 148, §63
Subsection 3 amended

524.606 Removal of directors.

1. At a meeting of shareholders expressly called for that purpose, individual directors or the entire board of directors may be removed, with or without cause, by the affirmative vote of the holders of a majority of the shares entitled to vote at an election of directors. The vacancies created may be filled at the same meeting at which the removal proceedings take place.

2. If, in the opinion of the superintendent, any director of a state bank has violated any law relating

to such state bank or has engaged in unsafe or unsound practices in conducting the business of such state bank, the superintendent may cause notice to be served upon such director, to appear before the superintendent to show cause why the director should not be removed from office. A copy of such notice shall be sent to each director of the state bank affected, by registered or certified mail. If, after granting the accused director a reasonable opportunity to be heard, the superintendent finds that the director violated any law relating to such state bank or engaged in unsafe or unsound practices in conducting the business of such state bank, the superintendent, in the superintendent's discretion, may order that such director be removed from office. A copy of the order shall be served upon such director and upon the state bank of which the person is a director at which time the person shall cease to be a director of the state bank. The resignation, termination of employment, or separation of such director, including a separation caused by the closing of the state bank at which the person serves as a director, does not affect the jurisdiction and authority of the superintendent to cause notice to be served and proceed under this subsection against the director, if the notice is served before the end of the six-year period beginning on the date the director ceases to be a director with the bank.

The decision of the superintendent shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. No action taken by a director prior to the director's removal shall be subject to attack on the ground of the director's disqualification.

95 Acts, ch 148, §64
Subsection 1 amended

524.607 Meetings — waiver of notice — quorum.

The board of directors shall hold at least nine regular meetings each calendar year. No more than one regular meeting shall be held in any one calendar month. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit directors to participate in meetings through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present at the meeting.

A special meeting may be called by any executive officer or a director. Notice of a meeting shall be given to each director, either personally or by mail, at least two days in advance of the meeting. Notice of a regular meeting shall not be required if the articles of incorporation, bylaws, or a resolution of the board of directors provide for a regular monthly meeting date.

Attendance of a director at a meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Whenever any notice is required to be given to any director of a state bank under the provisions of this chapter or under the provisions of the articles of incorporation or the bylaws of the state bank, a waiver thereof in writing, signed by the individual or individuals entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

A majority of the board of directors shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the laws of this state or of the United States, the articles of incorporation or the bylaws.

95 Acts, ch 148, §65

Unnumbered paragraph 1 divided and amended

524.608 Auditing procedures.

In addition to any examination made by the banking division or other supervisory agency, the board of directors shall review the adequacy of the bank's internal controls and cause to be made no less frequently than annually additional auditing procedures that the board deems to be appropriate. The board shall determine the bank's audit needs and record in the board's minutes the extent to which audit procedures are to be employed. A report which summarizes significant audit findings shall be delivered to the superintendent as soon as practical upon completion.

The superintendent may require that more comprehensive auditing procedures be applied to a bank's account records when deemed necessary. These auditing procedures may range from limited scope agreed-upon procedures to an unqualified audit opinion.

95 Acts, ch 148, §66

Section stricken and rewritten

524.610 Compensation of directors.

The shareholders of a state bank shall fix the reasonable compensation of directors for their services as members of the board of directors. Subject to the approval of the superintendent and approval by the shareholders at an annual or special meeting called for that purpose, the shareholders of a state bank may adopt a pension or profit sharing plan, or both, or other plan of deferred compensation for directors, to which a state bank may contribute.

Directors may be reimbursed for reasonable expenses incurred in the performance of their duties.

95 Acts, ch 148, §67

Section amended

524.612 Director dealing with state bank.

1. Subject to the provisions of section 524.904, a director of a state bank may receive loans and extensions of credit from a state bank of which the person is a director. A majority of the board of directors, voting in the absence of the applying director, shall give its

prior approval to such loans and extensions of credit. Approval shall be recorded in the minutes.

2. A director shall not be permitted to receive any loan or extension of credit or use any property of a state bank of which the person is a director at a lower rate of interest or on terms which are more favorable than the terms offered to other customers under similar circumstances.

3. A director shall not receive terms or be paid a rate of interest on deposits, by a state bank of which the person is a director, which are more favorable than that provided to any other customer under similar circumstances.

4. A director shall not purchase or lease any assets from or sell or lease any assets to a state bank of which the person is a director except upon terms not less favorable to the state bank than those offered to or by other persons. All purchases or leases from and sales or leases to a director shall receive the prior approval of a majority of the board of directors voting in the absence of the interested director.

5. For the purpose of this section and section 524.706, loans and extensions of credit, as defined in section 524.904, to the spouse of a director or officer, other than a spouse who is legally separated from the director or officer under a decree of divorce or separate maintenance, or to minor children of a director or officer to the state bank in which the person is a director or officer, are considered loans and extensions of credit of such director or officer. However, loans and extensions of credit of a spouse are not considered loans and extensions of credit of the director or officer if all of the following apply:

a. Assets and liabilities of a director or officer are not included in the financial statement of the spouse and are not otherwise relied upon as a basis for loans or extensions of credit to the spouse.

b. The guarantee of a director or officer is not relied upon as a basis for loans or extensions of credit to the spouse.

c. The proceeds of the loans and extensions of credit to the spouse are not intermingled with or used for a common purpose with the proceeds of loans and extensions of credit to the director or officer.

95 Acts, ch 148, §68

Section amended

524.613 Prohibitions applicable to certain financial transactions involving directors.

1. A director of a state bank shall not receive anything of value, other than compensation and expense reimbursement authorized by section 524.610, for procuring, or attempting to procure, any loan or extension of credit, as defined in section 524.904, to the state bank or for procuring, or attempting to procure, an investment by the state bank.

2. A state bank shall not pay an overdraft of a director of the state bank on an account at the state bank, unless the payment of funds is made in accordance with either of the following:

a. A written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment.

b. A written, preauthorized transfer of collected funds from another account of the account holder at the state bank.

95 Acts, ch 148, §69
Section amended

524.614 Honorary and advisory directors.

The board of directors of a state bank may appoint an individual as an honorary director, director emeritus, or member of an advisory board. An individual so appointed shall not vote at any meeting of the board of directors, shall not be counted in determining a quorum, and shall not be charged with any responsibilities or be subject to any liabilities imposed upon directors by this chapter.

95 Acts, ch 148, §70
Section amended

524.701 Officers and employees.

1. A state bank shall have as officers a president, one vice president, and a cashier. No more than two of these positions may be held by the same individual. A state bank may have other officers as prescribed by the articles of incorporation or bylaws.

2. The board of directors shall elect one officer as the chief executive officer, who shall be a member of the board of directors.

3. Upon written notice by the superintendent, an individual who performs active executive or official duties for a state bank may be treated as an executive officer. A state bank may have a chairperson of the board of directors who, if the person does not perform executive or official duties or receive a salary, need not be considered an executive officer of the state bank.

4. An individual employed by a state bank, other than a director or an officer, is considered an employee for the purposes of this chapter.

95 Acts, ch 148, §71
Section stricken and rewritten

524.703 Officers and employees — employment and compensation.

The board of directors may fix the tenure and provide for the reasonable compensation of officers. The chief executive officer or the chief executive officer's designee shall determine the employees' compensation and tenure. Officers and employees may be reimbursed for reasonable expenses incurred by them on behalf of the state bank.

Subject to the approval of the superintendent, and approval by the shareholders at an annual or special meeting called for the purpose, the board of directors of a state bank may adopt a pension or profit-sharing plan, or both, or other plan of deferred compensation, for both officers and employees, to which the state bank may contribute.

95 Acts, ch 148, §72
Section amended

524.704 Employee — employment and compensation. Repealed by 95 Acts, ch 148, § 135. See § 524.703.

524.705 Bonds of officers and employees.

The officers and employees of a state bank having the care, custody, or control of any funds or securities for any state bank shall give a good and sufficient bond in a company authorized to do business in this state indemnifying the state bank against losses, which may be incurred by reason of any act or acts of fraud, dishonesty, forgery, theft, larceny, embezzlement, wrongful abstraction, misapplication, misappropriation, or other unlawful act committed by such officer or employee directly or through connivance with others, until all of the officer's or employee's accounts with the state bank are fully settled and satisfied. The amounts and sureties are subject to the approval of the board of directors. The superintendent may require higher amounts as deemed necessary. If the agent of a bonding company issuing a bond under this section is an officer or employee of the state bank upon which the bond was issued, the bond so issued shall contain a provision that the bonding company shall not use, either as a grounds for rescission or as a defense to liability under the terms and conditions of the bond, the knowledge that the agent was so employed, whether or not the agent received any part of the premium for the bond as a commission.

95 Acts, ch 148, §73
Section amended

524.706 Officer dealing with state bank.

1. a. An executive officer of a state bank may receive loans or extensions of credit from a state bank of which the person is an executive officer not exceeding, in the aggregate, the following:

(1) An amount secured by a lien on a dwelling which is expected, after the obligation is incurred, to be owned by the executive officer and used as the officer's principal residence.

(2) An amount to finance the education of a child or children of the executive officer.

(3) Any other loans or extensions of credit which in the aggregate do not at any one time exceed the higher of twenty-five thousand dollars or two and one-half percent of the bank's aggregate capital, but in no event more than one hundred thousand dollars.

(4) Other amounts which do not, in the aggregate, exceed the principal amounts of segregated deposit accounts which the bank may lawfully set off. An interest in or portion of a segregated deposit account does not satisfy the requirements of this subparagraph if that interest or portion is also pledged to secure the payment of a debt or obligation of any person other than the executive officer. If the deposit is eligible for withdrawal before the secured loan matures, the bank shall establish internal procedures to prevent the release of the security without the bank's prior consent.

b. A state bank shall not loan money or extend credit to an executive officer of the state bank, and an executive officer of a state bank shall not receive a loan or extension of credit from the state bank, exceeding the limitations imposed by this section or for

a purpose other than that authorized by this section. Such loans or extensions of credit shall not exceed an amount totaling more than fifteen percent of the aggregate capital of the state bank and any such loan on real property shall comply with section 524.905. A majority of the board of directors, voting in the absence of the applying executive officer, whether or not the executive officer is also a director, shall give its prior approval to any obligation of an executive officer to the state bank of which the person is an executive officer. Approval shall be recorded in the minutes.

2. Section 524.612, subsection 2, applies to executive officers, and section 524.612, subsections 3 and 4, apply to all officers and employees.

3. Upon the request of the board of directors, an officer or employee of a state bank shall submit to the board of directors a personal financial statement which shall include the names of all persons to whom the officer or employee is obligated, the dates, terms, and amounts of each loan or other obligation, the security for the loan or obligation, and the purpose for which the proceeds of the loan or other obligation has been or is to be used.

4. Upon the request of the superintendent, a director or an officer of a state bank shall submit to the superintendent a personal financial statement which shall show the names of all persons to whom the director or officer is obligated, the dates, terms, and amounts of each loan or other obligation, the security for the loan or obligation, and the purpose for which the proceeds of the loan or other obligation has been or is to be used.

95 Acts, ch 148, §74
Section amended

524.707 Removal of officers or employees.

1. An officer or employee may be removed by the board of directors whenever in its judgment the best interests of the state bank shall be served by such removal, but the removal shall be without prejudice to the contract rights, if any, of the officer or employee so removed. Election of an officer shall not of itself create contract rights.

2. Section 524.606, subsection 2, which provides for the removal of directors by the superintendent, shall have equal application to officers and employees.

95 Acts, ch 148, §75
Section amended

524.708 Report of change in officer personnel.

A state bank shall promptly notify the superintendent of any change in the individuals holding the offices of chief executive officer or president.

95 Acts, ch 148, §76
Section amended

524.710 Prohibitions applicable to certain financial transactions involving officers and employees.

1. An officer or employee of a state bank shall not do any of the following:

a. Receive anything of value, other than compen-

sation as authorized by section 524.703, for procuring, or attempting to procure, any loan or extension of credit, as defined in section 524.904, for the state bank or for procuring, or attempting to procure, an investment by the state bank.

b. Engage, directly or indirectly, in the sale of any kind of insurance, shares of stock, bonds or other securities, or real property, or procure or attempt to procure for a fee or other compensation, a loan or extension of credit for any person from a person other than the state bank of which the person is an officer or employee, or act in any fiduciary capacity, unless authorized to do so by the board of directors of the state bank which shall also determine the manner in which the profits, fees, or other compensation derived therefrom shall be distributed.

2. A state bank shall not pay an overdraft of an officer or employee of the state bank on an account at the state bank, unless the payment of funds is made in accordance with either of the following:

a. A written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment.

b. A written, preauthorized transfer of collected funds from another account of the account holder at the state bank.

95 Acts, ch 148, §77
Section amended

524.801 General powers.

A state bank, unless otherwise stated in its articles of incorporation, shall have power:

1. To sue and be sued, complain and defend, in its corporate name.

2. To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

3. To purchase, take, receive, lease, or otherwise acquire, own, hold, improve and use real or personal property, or an interest therein, in connection with the exercise of any power granted in this chapter.

4. To sell, convey, pledge, mortgage, grant a security interest, lease, exchange, transfer, and release from trust or mortgage or otherwise dispose of all or any part of real or personal property, or an interest therein, in connection with the exercise of any power granted in this chapter.

5. To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the state bank.

6. To make donations for the public welfare for religious, charitable, scientific or educational or community development purposes.

7. To indemnify a director, officer, or employee, or a former director, officer, or employee of the state bank in the manner and in the instances authorized by sections 490.850 through 490.858.

8. To elect officers or appoint agents of the state bank and define their duties and fix their compensation.

9. To cease its existence as a state bank in the manner provided for in this chapter.

10. To have and exercise all powers necessary and proper to effect any or all of the purposes for which the state bank is organized.

11. To contract indebtedness and incur liabilities to effect any or all of the purposes for which the state bank is organized, subject to the provisions of this chapter.

12. To set off a customer's account against any of the customer's debts or liabilities owed the state bank pursuant to an agreement entered into between the customer and the state bank.

The powers granted in this section shall not be construed as limiting or enlarging any grant of authority made elsewhere in this chapter, or as a limitation on the purposes for which a state bank may be incorporated.

95 Acts, ch 148, §78, 79
 Subsection 1 stricken and former subsections 2-12 renumbered as 1-11
 NEW subsection 12

524.802 Additional powers of a state bank.

A state bank shall have in addition to other powers granted by this chapter, and subject to the limitations and restrictions contained in this chapter, the power to do all of the following:

1. Become an insured bank pursuant to the Federal Deposit Insurance Act and to take action as necessary to maintain the state bank's insured status.

2. Become a member of the federal reserve system, to acquire and hold shares in the appropriate federal reserve bank and to exercise all powers conferred on member banks by the federal reserve system that are not inconsistent with this chapter.

3. Become a member of a clearinghouse association.

4. Act as agent of the United States or of any instrumentality or agency of the United States.

5. Act as agent for a depository institution affiliate to the same extent that a national bank can act as an agent for a depository institution under the provisions of section 18 of the Federal Deposit Insurance Act, 12 U.S.C. § 1828.

6. Buy and sell coin, currency, and bullion.

7. Organize, acquire, and hold shares of stock in an operations subsidiary, with the prior approval of the superintendent.

8. Engage in the brokerage of insurance and real estate subject to the prior approval of the superintendent. These activities are subject to regulation, including but not limited to regulation under subtitle 1 and subtitle 4 of this title.

9. Acquire and hold shares of stock in the appropriate federal home loan bank and to exercise all powers conferred on member banks of the federal home loan bank system that are not inconsistent with this chapter. A purchase of federal home loan bank shares which causes the state bank's holdings to exceed fifteen percent of aggregate capital requires the prior approval of the superintendent.

10. Acquire and hold shares of stock in the federal agricultural mortgage corporation or corporations engaged solely in the pooling of agricultural loans for the federal agricultural mortgage corporation guaranties.

11. Become a member of a bankers' bank.

12. Subject to the prior approval of the superintendent, organize, acquire, or invest in a subsidiary for the purpose of engaging in any of the following:

a. Nondepository activities that a state bank is authorized to engage in directly under this chapter.

b. Activities that a bank service corporation is authorized to engage in under state or federal law or regulation.

c. Activities authorized pursuant to section 524.825.

13. Acquire, hold, and improve real estate for the sole purpose of economic or community development, provided that the state bank's aggregate investment in all acquisitions and improvements of real estate under this subsection shall not exceed fifteen percent of a state bank's aggregate capital and shall be subject to the prior approval of the superintendent.

14. All other powers determined by the superintendent to be appropriate for a state bank.

95 Acts, ch 148, §80
 Section amended

524.803 Business property of state bank.

1. A state bank shall have power to do all of the following:

a. Acquire and hold, or lease as lessee, such personal property as is used, or is to be used, in its operations.

b. Subject to the prior approval of the superintendent, acquire and hold, or lease as lessee, only such real property as is used, or is to be used, wholly or substantially, in its operations or acquired for future use.

c. Subject to the prior approval of the superintendent, acquire and hold shares in a corporation engaged solely in holding or operating real property used wholly or substantially by a state bank in its operations or acquired for its future use.

d. Subject to the prior approval of the superintendent, acquire and hold shares in a corporation organized solely for the purpose of providing data processing services, as such services are defined in section 524.804.

e. Subject to the prior approval of the superintendent, acquire and hold shares in a corporation engaged in providing and operating facilities through which banks and customers may engage, by means of either the direct transmission of electronic impulses to and from a bank or the recording of electronic impulses or other indicia of a transaction for delayed transmission to a bank, in transactions in which such banks are otherwise permitted to engage pursuant to applicable law.

2. The book value of all real and personal property acquired and held pursuant to this section, of all alterations to buildings on real property owned or

leased by a state bank, of all shares in corporations acquired pursuant to paragraphs "c", "d", and "e" of subsection 1, and of any and all obligations of such corporations to the state bank, shall not exceed forty percent of the aggregate capital of the state bank or such larger amount as may be approved by the superintendent.

3. Any real property which is held by a state bank pursuant to this section and which it ceases to use for banking purposes, or is acquired for future use but not used within a reasonable period of time, shall be sold or disposed of by the state bank as directed by the superintendent.

95 Acts, ch 148, §81
Section amended

524.804 Data processing services.

A state bank which owns or leases equipment to perform such bank services as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or other clerical, bookkeeping, accounting, statistical, or other similar functions, may provide similarly related data processing services for others whether or not engaged in the business of banking. If a state bank holds shares in a corporation organized solely for the purpose of providing data processing services, pursuant to the authority granted by section 524.803, subsection 1, paragraph "d", other than a bank service corporation as defined by the laws of the United States, such corporation shall be authorized to perform services for the state bank owning such interest and for others, whether or not engaged in the business of banking.

95 Acts, ch 148, §82
Section amended

524.805 Deposits.

1. A state bank may receive money for deposit and may provide, by resolution of the board of directors, for the payment of interest on such deposit and shall repay the deposit in accordance with the terms and conditions of its acceptance.

2. The terms and conditions attending an agreement to pay interest on deposits shall be furnished to each customer at the time of the acceptance by the state bank of the initial deposit. No change made in the terms and conditions attending an agreement to pay interest which adversely affects the interest of a depositor shall be retroactively effective. Savings account depositors and holders and payees of automatic renewal time certificates of deposit shall be given reasonable notice of any change in the terms and conditions attending an agreement to pay interest prior to the effective date thereof.

3. A state bank may make such charges for the handling or custody of deposits as may be fixed by its board of directors provided that a schedule of the charges shall be furnished to the customer at the time of acceptance by the state bank of the initial deposit. Any change in the charges shall be furnished to the

customer within a reasonable period of time before the effective date of the change.

4. A state bank shall not accept deposits or renew certificates of deposit when insolvent.

5. Except as provided in section 524.807, a state bank may receive deposits by or in the name of a minor and may deal with a minor with respect to a deposit account without the consent of a parent, guardian or conservator and with the same effect as though the minor were an adult. Any action of the minor with respect to such deposit account shall be binding on the minor with the same effect as though an adult.

6. A state bank may receive deposits from a person acting as fiduciary or in an official capacity which shall be payable to such person in such capacity.

7. A state bank may receive deposits from a corporation, trust, estate, association or other similar organization which shall be payable to any person authorized by its board of directors or other persons exercising similar functions.

8. A state bank may receive deposits from one or more persons with the provision that upon the death of the depositors the deposit account shall be the property of the person or persons designated by the deceased depositors as shown on the deposit account records of the state bank. The account is subject to the debts of the deceased depositors and the payment of Iowa inheritance tax provided, that upon the expiration of six months after the date of death of the deceased depositors, the receipt or acquittance of the persons designated is a valid and sufficient release and discharge of the state bank for the delivery of any part or all of the account.

95 Acts, ch 148, §83, 84
Subsection 1 amended
Subsection 2 stricken and former subsections 3-9 renumbered as 2-8
Subsection 3 amended

524.809 Authority to lease safe deposit boxes.

1. A state bank may lease safe deposit boxes for the storage of property on terms and conditions prescribed by the state bank. The terms and conditions shall not bind a customer or the customer's successors or legal representatives to whom the state bank does not give notice of such terms and conditions by delivery of a lease and agreement in writing containing the terms and conditions. A state bank may limit its liability provided such limitations are set forth in the lease and agreement in at least the same size and type as the other substantive provisions of the lease and agreement.

2. The lease and agreement of a safe deposit box may provide that evidence tending to prove that property was left in any such box upon the last entry by the customer or the customer's authorized agent, and that the same or any part thereof was found missing upon subsequent entry, shall not be sufficient to raise a presumption that the same was lost by any negligence or wrongdoing for which such state bank is responsible, or put upon the state bank the burden of proof that such alleged loss was not the fault of the state bank.

3. A state bank may lease a safe deposit box to a minor. A state bank may deal with a minor with respect to a safe deposit lease and agreement without the consent of a parent, guardian or conservator and with the same effect as though the minor were an adult. Any action of the minor with respect to such safe deposit lease and agreement shall be binding on the minor with the same effect as though an adult.

4. A state bank which has on file a power of attorney of a customer covering a safe deposit lease and agreement, which has not been revoked by the customer, shall incur no liability as a result of continuing to honor the provisions of the power of attorney in the event of the death or incompetence of the donor of the power of attorney until it receives written notice of the death, or written notice of adjudication by a court of the incompetence of the customer and the appointment of a guardian or conservator.

95 Acts, ch 148, §85
Subsection 1 amended

524.812 Remedies and proceedings for non-payment of rent on safe deposit box.

1. A state bank shall have a lien upon the contents of a safe deposit box for past due rentals and any expense incurred in opening the safe deposit box, replacement of the locks thereon, and of any sale made pursuant to this section. If the rental of any safe deposit box is not paid within six months from the day it is due, at any time thereafter and while such rental remains unpaid, the state bank shall mail a notice by certified or registered mail to the customer at the customer's last known address as shown upon the records of the state bank, stating that if the amount due for such rental is not paid on or before a specified day, which shall be at least thirty days after the date of mailing such notice, the state bank will remove the contents thereof and hold the same for the account of the customer.

2. If the rental for the safe deposit box has not been paid prior to the expiration of the period specified in a notice mailed pursuant to subsection 1 of this section, the state bank may, in the presence of two of its officers, cause the box to be opened and the contents removed. An inventory of the contents of the safe deposit box shall be made by the two officers present and the contents held by the state bank for the account of the customer.

3. If the contents are not claimed within two years after their removal from the safe deposit box, the state bank may proceed to sell so much of the contents as is necessary to pay the past due rentals and the expense incurred in opening the safe deposit box, replacement of the locks thereon and the sale of the contents. The sale shall be held at the time and place specified in a notice published prior to the sale once each week for two successive weeks in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the state bank has its principal place of business, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the

county, in which the state bank has its principal place of business. A copy of the notice so published shall be mailed to the customer at the customer's last known address as shown upon the records of the state bank. The notice shall contain the name of the customer and need only describe the contents of the safe deposit box in general terms. The contents of any number of safe deposit boxes may be sold under one notice of sale and the cost thereof apportioned ratably among the several safe deposit box customers involved. At the time and place designated in said notice the contents taken from each respective safe deposit box shall be sold separately to the highest bidder for cash and the proceeds of each sale applied to the rentals and expenses due to the state bank and the residue from any such sale shall be held by the state bank for the account of the customer or customers. Any amount so held as proceeds from such sale shall be credited with interest at the customary annual rate for savings accounts at said state bank, or in lieu thereof, at the customary rate of interest in the community where such proceeds are held. The crediting of interest shall not activate said account to avoid an abandonment as unclaimed property under chapter 556.

4. Notwithstanding any of the provisions of this section, shares, bonds, or other securities which, at the time of a sale pursuant to subsection 3 of this section, are listed on any established stock exchange in the United States, shall not be sold at public sale but may be sold through an established stock exchange. Upon the making of a sale of any such securities, an officer of the state bank shall execute and attach to the securities so sold an affidavit reciting facts showing that such securities were sold pursuant to this section and that the state bank has complied with the provisions of this section. The affidavit shall constitute sufficient authority to any corporation whose shares are so sold or to any registrar or transfer agent of such corporation to cancel the certificates of shares so sold and to issue a new certificate or certificates representing such shares to the purchaser thereof, and to any registrar, trustee, or transfer agent of registered bonds or other securities, to register any such bonds or other securities in the name of the purchaser thereof.

5. The proceeds of any sale made pursuant to this section, after the payment of any amounts with respect to which the state bank has a lien, any property which was not offered for sale and property which, although offered for sale, was not sold, shall be retained by the state bank until such time as the property is presumed abandoned according to the provisions of section 556.2, and shall thereafter be handled in accordance with the provisions of that chapter.

95 Acts, ch 148, §86
Subsection 2 amended

524.825 Securities activities.

Subject to the prior approval of the superintendent and as authorized by rules adopted by the superin-

tendent pursuant to chapter 17A, a state bank or a subsidiary of a state bank organized or acquired pursuant to section 524.802, subsection 12, may engage in directly, or may organize, acquire, or invest in a subsidiary for the purpose of engaging in securities activities and any aspect of the securities industry, including, but not limited to, any of the following:

1. Issuing, underwriting, selling, or distributing stocks, bonds, debentures, notes, interest in mutual funds or money-market-type mutual funds, or other securities.

2. Organizing, sponsoring, and operating one or more mutual funds.

3. Acting as a securities broker-dealer licensed under chapter 502. The business relating to securities shall be conducted through, and in the name of, the broker-dealer. The requirements of chapter 502 apply to any business of the broker-dealer transacted in this state.

A subsidiary engaging in activities authorized by this section may also engage in any other authorized activities under section 524.802, subsection 12.

95 Acts, ch 148, §87
Section amended

524.901 Investments.

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

a. "*Investment securities*" means marketable obligations in the form of bonds, notes, or debentures which have been publicly offered, are of sound value, or are secured so as to be readily marketable at a fair value, and are within the four highest grades according to a reputable rating service or represent unrated issues of equivalent value. "*Investment securities*" does not include investments which are predominately speculative in nature.

b. "*Shares*" means proprietary units of ownership of a corporation.

2. A state bank shall not invest for its own account more than fifteen percent of its aggregate capital in investment securities of any one obligor. Any premium paid by a state bank for any investment securities shall not be included in determining the amount that may be invested under this subsection.

3. Subject only to the exercise of prudent banking judgment, a state bank may invest for its own account without regard to the limitation provided in subsection 2 in any of the following:

a. Investment securities of the United States of which the payment of principal and interest is fully and unconditionally guaranteed by the United States.

b. Investment securities issued, insured, or guaranteed by a department or an agency of the United States government, provided that the securities, insurance, or guarantee commits the full faith and credit of the United States for the repayment of the securities.

c. Investment securities of the federal national mortgage association or the association's successor.

d. Investment securities of the federal home loan mortgage corporation or the corporation's successor.

e. Investment securities of the student loan marketing association or the association's successor.

f. Investment securities of a federal home loan bank.

g. Investment securities of a farm credit bank.

h. Investment securities representing general obligations of the state of Iowa or of political subdivisions of the state.

4. A state bank may invest without limit in the shares or units of investment companies or investment trusts registered under the federal Investment Company Act of 1940, 15 U.S.C. § 80a, the portfolio of which is limited to United States investment securities described in subsection 3 or repurchase agreements fully collateralized by United States investment securities described in subsection 3, if delivery of the collateral is taken either directly or through an authorized custodian and the dollar-weighted average maturity of the portfolio is not more than five years. All other investments by a state bank in the shares or units of investment companies or investment trusts registered under the federal Investment Company Act of 1940, 15 U.S.C. § 80a, whose portfolios exclusively contain investment securities permissible pursuant to subsections 2 and 3, shall not exceed fifteen percent of the state bank's aggregate capital.

5. To the extent necessary to meet minimum membership or participation criteria, a state bank may invest for its own account in the shares of the appropriate federal reserve bank, the appropriate federal home loan bank, the federal national agricultural mortgage corporation or corporations engaged solely in the pooling of agricultural loans for federal agricultural mortgage corporation guarantees, and other similar investments acceptable to the superintendent and approved in writing by the superintendent. The bank's investment in the shares of each of the organizations is limited to fifteen percent of its aggregate capital or a higher amount as approved by the superintendent. Notwithstanding the specific requirements of this section, any shares of government-sponsored entities held by a state bank on or before July 1, 1995, shall be authorized.

6. A state bank, upon the approval of the superintendent, may acquire and hold the shares of any corporation which a state bank is authorized to acquire and hold pursuant to this chapter.

7. A state bank, upon the approval of the superintendent, may invest up to five percent of its aggregate capital in the shares or equity interests of any of the following:

a. Economic development corporations organized under chapter 496B to the extent authorized by and subject to the limitations of that chapter.

b. Community development corporations or community development projects to the same extent a national bank may invest in such corporations or projects pursuant to 12 U.S.C. § 24.

c. Small business investment companies as defined by the laws of the United States.

d. Venture capital funds which invest an amount equal to at least fifty percent of a state bank's investment in small businesses having their principal offices within this state and having either more than one-half of their assets within this state or more than one-half of their employees employed within this state.

e. Small businesses having a principal office within this state and having either more than one-half of their assets within this state or more than one-half of their employees employed within this state. An investment by a state bank in a small business under this paragraph shall be included with the obligations of the small business to the state bank that are incurred as a result of the exercise by the state bank of the powers conferred in section 524.902 for the purpose of determining the total obligations of the small business pursuant to section 524.904. A state bank's equity interest investment in a small business, pursuant to this paragraph, shall not exceed a twenty percent ownership interest in the small business.

f. Other entities, acceptable to the superintendent, whose sole purpose is to promote economic or civic developments within a community or this state.

A state bank's total investment in any combination of the shares or equity interests of the entities identified in paragraphs "a" through "f" shall be limited to fifteen percent of its aggregate capital.

For purposes of this subsection, the term "*venture capital fund*" means a corporation, partnership, proprietorship, or other entity whose principal business is or will be the making of investments in, and the providing of significant managerial assistance to, small businesses. The term "*small business*" means a corporation, partnership, proprietorship, or other entity which meets the appropriate United States small business administration definition of small business and which is principally engaged in the development or exploitation of inventions, technological improvements, new processes, or other products not previously generally available in this state, or other investments which provide an economic benefit to the state. The term "*equity interests*" means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

8. A state bank, in the exercise of the powers granted in this chapter, may purchase cash value life insurance contracts which may include provisions for the lump sum payment of premiums and which may include insurance against the loss of the lump sum payment. The cash value life insurance contracts purchased from any one company shall not exceed fifteen percent of aggregate capital of the state bank, and in the aggregate from all companies, shall not exceed twenty-five percent of aggregate capital of the state bank unless the state bank has obtained the approval of the superintendent prior to the purchase of any cash value life insurance contract in excess of this limitation.

9. A state bank may invest without limitation for its own account in futures, forward, and standby contracts to purchase and sell any of the instruments a state bank is authorized to purchase and sell, subject to the prior approval of the superintendent and pursuant to applicable federal laws and regulations governing such contracts. Purchase and sale of such contracts shall be conducted in accordance with safe and sound banking practices and with the level of the activity being reasonably related to the state bank's business needs and capacity to fulfill its obligations under the contracts.

95 Acts, ch 148, §88
Section stricken and rewritten

524.903 Purchase and sale of drafts and bills of exchange.

1. A state bank shall have power to accept drafts drawn upon it having not more than six months after sight to run, exclusive of days of grace:

a. Which grow out of transactions involving the importation or exportation of goods.

b. Which grow out of transactions involving the domestic shipment of goods, provided documents of title are attached thereto at the time of acceptance.

c. In which a security interest is perfected at the time of acceptance covering readily marketable staples.

2. A state bank shall not accept such drafts in an amount which exceeds at any time in the aggregate for all drawers thirty percent of the state bank's aggregate capital. The superintendent may authorize a state bank to accept drafts in an amount not exceeding at any time in the aggregate for all drawers sixty percent of the state bank's aggregate capital, but the aggregate of acceptance growing out of domestic transactions shall in no event exceed thirty percent of aggregate capital.

3. A state bank, with the prior approval of the superintendent, may accept drafts, having not more than three months after sight to run, drawn upon it by banks or bankers in foreign countries, or in dependencies or insular possessions of the United States, for the purpose of furnishing dollar exchange as required by the usages of trade where the drafts are drawn in an aggregate amount which shall not at any time exceed for all such acceptance on behalf of a single bank or banker seven and one-half percent of the state bank's aggregate capital, and for all such acceptances, thirty percent of the state bank's aggregate capital.

95 Acts, ch 148, §89
Subsections 2 and 3 amended

524.904 Loans and extensions of credit to one borrower.

1. For purposes of this section, "*loans and extensions of credit*" means a state bank's direct or indirect advance of funds to a borrower based on an obligation of that borrower to repay the funds or repayable from specific property pledged by the borrower and shall include:

a. A contractual commitment to advance funds, as defined in section 524.103.

b. A maker or endorser's obligation arising from a state bank's discount of commercial paper.

c. A state bank's purchase of securities subject to an agreement that the seller will repurchase the securities at the end of a stated period.

d. A state bank's purchase of third-party paper subject to an agreement that the seller will repurchase the paper upon default or at the end of a stated period. The amount of the state bank's loan is the total unpaid balance of the paper owned by the state bank less any applicable dealer reserves retained by the state bank and held by the state bank as collateral security. Where the seller's obligation to repurchase is limited, the state bank's loan is measured by the total amount of the paper the seller may ultimately be obligated to repurchase. A state bank's purchase of third-party paper without direct or indirect recourse to the seller is not a loan or extension of credit to the seller.

e. An overdraft.

f. Amounts paid against uncollected funds.

g. Loans or extensions of credit that have been charged off the books of the state bank in whole or in part, unless the loan or extension of credit has become unenforceable by reason of discharge in bankruptcy; or is no longer legally enforceable because of expiration of the statute of limitations or a judicial decision; or forgiven under an executed written agreement by the state bank and the borrower.

h. The aggregate rentals payable by the borrower under leases of personal property by the state bank as lessor.

i. Loans and extensions of credit to one borrower consisting of investments in which the state bank has invested pursuant to section 524.901.

j. Amounts invested by a state bank for its own account in the shares and obligations of a corporation which is a customer of the state bank.

k. All other loans and extensions of credit to one borrower of the state bank not otherwise excluded by subsection 7, whether directly or indirectly, primarily or secondarily.

2. A state bank's total outstanding loans and extensions of credit to one borrower shall not exceed fifteen percent of the state bank's aggregate capital as defined in section 524.103, unless the additional lending provisions described in subsections 3, 4, and 5 apply.

3. A state bank may grant loans or extensions of credit to one borrower up to twenty-five percent of the state bank's aggregate capital if the amount that exceeds fifteen percent of the state bank's aggregate capital is fully secured by one or any combination of the following:

a. Nonnegotiable bills of lading, warehouse receipts, or other documents transferring or securing title covering readily marketable nonperishable staples when such goods are covered by insurance to the extent that insuring the goods is customary, and when the market value of the goods is not at any time

less than one hundred twenty percent of the amount of the loans and extensions of credit.

b. Nonnegotiable bills of lading, warehouse receipts, or other documents transferring or securing title covering readily marketable refrigerated or frozen staples when such goods are fully covered by insurance and when the market value of the goods is not at any time less than one hundred twenty percent of the amount of the loans and extensions of credit.

c. Shipping documents or instruments that secure title to or give a first lien on livestock. At inception, the current value of the livestock securing the loans must equal at least one hundred percent of the amount of the outstanding loans and extensions of credit. For purposes of this section, "livestock" includes dairy and beef cattle, hogs, sheep, and poultry, whether or not held for resale. For livestock held for resale, current value means the price listed for livestock in a regularly published listing or actual purchase price established by invoice. For livestock not held for resale, the value shall be determined by the local slaughter price. The bank must maintain in its files evidence of purchase or an inspection and valuation for the livestock pledged that is reasonably current, taking into account the nature and frequency of turnover of the livestock to which the documents relate.

d. Mortgages, deeds of trust, or similar instruments granting a first lien on farmland or on single-family or two-family residences, subject to the provisions of section 524.905, provided the amount loaned shall not exceed fifty percent of the appraised value of such real property.

e. With the prior approval of the superintendent, other readily marketable collateral. The market value of the collateral securing the loans must at all times equal at least one hundred percent of the outstanding loans and extensions of credit.

4. A state bank may grant loans and extensions of credit to a corporate group, including the lending provisions of subsection 3, in an amount not to exceed twenty-five percent of the state bank's aggregate capital. A corporate group includes a person and all corporations in which the person owns or controls fifty percent or more of the shares entitled to vote.

5. A state bank may grant loans or extensions of credit to one borrower not to exceed thirty-five percent of the state bank's aggregate capital if the amount that exceeds the lending provisions provided in subsections 2, 3, and 4 consists of obligations as endorser of negotiable chattel paper negotiated by endorsement with recourse, or as unconditional guarantor of nonnegotiable chattel paper, or as transferor of chattel paper endorsed without recourse subject to a repurchase agreement.

6. For purposes of this section:

a. Loans and extensions of credit to one person will be attributed to another person and will be considered one borrower if either of the following apply:

(1) The proceeds, or assets purchased with the proceeds, benefit another person, other than a bona

fide arm's length transaction where the proceeds are used to acquire property, goods, or services.

(2) The expected source of repayment for each loan or extension of credit is the same for each borrower and no borrower has another source of income from which the loan may be fully repaid.

b. Loans and extensions of credit to a partnership, joint venture, or association are deemed to be loans and extensions of credit to each member of the partnership, joint venture, or association. This provision does not apply to limited partners in limited partnerships or to members of joint ventures or associations if the partners or members, by the terms of the partnership or membership agreement or other written agreement, are not to be held generally liable for the debts or actions of the partnership, joint venture, or association, and those provisions are valid under applicable law.

c. Loans and extensions of credit to members of a partnership, joint venture, or association are not attributed to the partnership, joint venture, or association unless loans and extensions of credit are made to the member to purchase an interest in the partnership, joint venture, or association, or the proceeds are used for a common purpose with the proceeds of loans and extensions of credit to the partnership, joint venture, or association.

d. Loans and extensions of credit to one borrower which are endorsed or guaranteed by another borrower will not be combined with loans and extensions of credit to the endorser or guarantor unless the endorsement or guaranty is relied upon as a basis for the loans and extensions of credit. A state bank shall not be deemed to have violated this section if the endorsement or guaranty is relied upon after inception of loans and extensions of credit, but the state bank shall, if required by the superintendent, dispose of loans and extensions of credit to one borrower in the amount in excess of the limitations of this section within a reasonable time as fixed by the superintendent.

e. When the superintendent determines the interests of a group of more than one borrower, or any combination of the members of the group, are so interrelated that they should be considered a unit for the purpose of applying the limitations of this section, some or all loans and extensions of credit to that group of borrowers existing at any time shall be combined and deemed loans and extensions of credit to one borrower. A state bank shall not be deemed to have violated this section solely by reason of the fact that loans and extensions of credit to a group of borrowers exceed the limitations of this section at the time of a determination by the superintendent that the indebtedness of that group must be combined, but the state bank shall, if required by the superintendent, dispose of loans and extensions of credit to the group in the amount in excess of the limitations of this section within a reasonable time as fixed by the superintendent.

7. Total loans and extensions of credit to one borrower for the purpose of applying the limitations of this section shall not include any of the following:

a. Additional funds advanced for taxes or for insurance if the advance is for the protection of the state bank, and provided that such amounts receive the prior approval of the superintendent.

b. Accrued and discounted interest on existing loans or extensions of credit.

c. Any portion of a loan or extension of credit sold as a participation by a state bank on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event. If an originating state bank funds the entire loan, it must receive funding from the participants on the same day or the portions funded will be treated as loans by the originating state bank to the borrower.

d. Loans and extensions of credit to one borrower to the extent secured by a segregated deposit account which the state bank may lawfully set off. An amount held in a segregated deposit account in the name of more than one customer shall be counted only once with respect to all borrowers. Where the deposit is eligible for withdrawal before the secured loan matures, the state bank must establish internal procedures to prevent release of the security without the state bank's prior consent.

e. Loans and extensions of credit to one borrower which is a bank.

f. Loans and extensions of credit to one borrower which are fully secured by bonds and securities of the kind in which a state bank is authorized to invest for its own account without limitation under section 524.901, subsection 3.

g. Loans and extensions of credit to a federal reserve bank or to the United States, or of any department, bureau, board, commission, agency, or establishment of the United States, or to any corporation owned directly or indirectly by the United States, or loans and extensions of credit to one borrower to the extent that such loans and extensions of credit are fully secured or guaranteed or covered by unconditional commitments or agreements to purchase by a federal reserve bank or by the United States, or any department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States. Loans and extensions of credit to one borrower secured by a lease on property under the terms of which the United States, or any department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States, or the state of Iowa, or any political subdivision of the state, is lessee and under the terms of which the aggregate rentals pay-

able to the borrower will be sufficient to satisfy the amount loaned is considered to be loans and extensions of credit secured or guaranteed as provided for in this paragraph.

h. Loans and extensions of credit to one borrower as the drawer of drafts drawn in good faith against actually existing values in connection with a sale of goods which have been endorsed by the borrower with recourse or which have been accepted.

i. Loans and extensions of credit arising out of the discount of commercial paper actually owned by a borrower negotiating the same and endorsed by a borrower without recourse and which is not subject to repurchase by a borrower.

j. Loans and extensions of credit drawn by a borrower in good faith against actually existing values and secured by nonnegotiable bills of lading for goods in process of shipment.

k. Loans and extensions of credit in the form of acceptances of other banks of the kind described in section 524.903, subsection 3.

l. Loans and extensions of credit of the borrower by reason of acceptances by the state bank for the account of the borrower pursuant to section 524.903, subsection 1.

95 Acts, ch 148, §90
Section stricken and rewritten

524.908 Leasing of personal property.

A state bank may make leases as authorized by rules adopted by the superintendent under chapter 17A.

95 Acts, ch 148, §91
Section stricken and rewritten

524.1009 Succession to fiduciary accounts and appointments — application for appointment of new fiduciary.

1. If a party to a plan of merger was authorized to act in a fiduciary capacity and if the resulting state or national bank is similarly authorized, the resulting state or national bank shall be automatically substituted by reason of the merger as fiduciary of all accounts held in that capacity by such party to the plan, without further action and without any order or decree of any court or public officer, and shall have all the rights and be subject to all the obligations of such party as fiduciary.

2. No designation, nomination, or appointment as fiduciary of a party to a plan of merger shall lapse by reason of the merger. The resulting state or national bank, if authorized to act in a fiduciary capacity, shall be entitled to act as fiduciary pursuant to each designation, nomination, or appointment to the same extent as the party to the plan so named could have acted in the absence of the merger.

3. Any person with an interest in an account held in a fiduciary capacity by a party to a plan of merger may, within sixty days after the effective date of the merger, apply to the district court in the county in which the resulting state or national bank has its principal place of business, for the appointment of a new fiduciary to replace the resulting state or na-

tional bank on the ground that the merger will adversely affect the administration of the fiduciary account. The court shall have the discretion to appoint a new fiduciary to replace the resulting state or national bank if it should find, upon hearing after notice to all interested parties, that the merger will adversely affect the administration of the fiduciary account and that the appointment of a new fiduciary will be in the best interests of the beneficiaries of the fiduciary account. This provision is in addition to any other provision of law governing the removal of fiduciaries and is subject to the terms upon which the party to the plan which held the fiduciary account was designated as fiduciary.

95 Acts, ch 148, §92
NEW section

524.1102 Loans and other transactions with affiliates.

A state bank shall not make any loan or any extension of credit to, or purchase securities under repurchase agreement from, any of its affiliates, or invest any of its funds in the shares, bonds, capital securities, or other obligations of an affiliate, or accept the shares, bonds, capital securities, or other obligations of an affiliate as collateral security for advances made to any customer, if the aggregate amount of the loans, extensions of credit, repurchase agreements, investments and advances against such collateral security will exceed:

1. In the case of any one affiliate, ten percent of the aggregate capital of the state bank.

2. In the case of all such affiliates, twenty percent of the aggregate capital of the state bank.

Within the foregoing limitations, each loan or extension of credit of any kind or character to an affiliate shall be secured by collateral in the form of shares of stock, bonds, capital securities or other such obligations having a market value at the time of making the loan or extension of credit of at least twenty percent more than the amount of the loan or extension of credit, or of at least ten percent more than the amount of the loan or extension of credit if it is secured by obligations of any state, or of any political subdivision or agency of the state, or of at least one hundred percent of the amount of the loan or extension of credit if it is secured by a segregated deposit account which the state bank may set off.

A loan or extension of credit to a director, officer, clerk, or other employee or any representative of any affiliate is deemed to be a loan to the affiliate to the extent that the proceeds of such loan are used for the benefit of, or transferred to, the affiliate.

The provisions of this section shall not apply to loans or extensions of credit fully secured by obligations of the United States, or the farm credit banks, or the federal home loan banks, or obligations fully guaranteed by the United States as to principal and interest. The provisions of this section shall not apply to indebtedness of any affiliate for unpaid balances due a state bank on assets purchased from the state bank.

For purposes of this section, the terms "extension of credit" and "extensions of credit" are deemed to include any purchase of securities under a repurchase agreement, other assets or obligations under a repurchase agreement, and the discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse.

95 Acts, ch 148, §93
Section amended

524.1103 Exceptions.

The provisions of section 524.1102 shall not apply to any affiliate:

1. Engaged solely in holding or operating real estate used wholly or substantially by the state bank in its operations or acquired for its future use.

2. Engaged solely in conducting a safe-deposit business or the business of an agricultural credit corporation eligible to discount loans with a farm credit bank.

3. Engaged solely in holding obligations of the United States, the farm credit banks, the federal home loan banks, or obligations fully guaranteed by the United States as to principal and interest.

4. Where the affiliate relationship has arisen as a result of shares acquired in satisfaction of a bona fide debt contracted prior to the date of the creation of such relationship provided that such shares shall be sold at public or private sale within one year from the date of the creation of the relationship, unless the time is extended by the superintendent.

5. Where the affiliate relationship exists by reason of the ownership or control of any voting shares thereof by a state bank as executor, administrator, trustee, receiver, agent, depository, or in any other fiduciary capacity, except where such shares are held for the benefit of all or a majority of the shareholders of such state bank.

6. Which is a bank.

7. Which is an operations subsidiary or other subsidiary in which the state bank owns or controls eighty percent or more of the voting shares. However, an operations subsidiary shall not conduct any activity at any location where the state bank itself would not be permitted to conduct that activity without the prior approval of the superintendent.

95 Acts, ch 148, §94
NEW subsection 7

524.1201 General provisions.

1. A bank shall not open or maintain a branch bank. A state bank may establish and operate bank offices subject to approval and regulation of the superintendent and to the restrictions upon location and number imposed by section 524.1202. A bank office may furnish all banking services ordinarily furnished to customers and depositors at the principal place of business of the state bank which operates the office, and a bank office manager or an officer of the bank shall be physically present at each bank office during a majority of its business hours. The central executive and official business and principal recordkeeping functions of a state bank shall be

exercised only at its principal place of business or at another bank office as authorized by the superintendent for these functions.

2. Notwithstanding subsection 1, data processing services referred to in section 524.804 may be performed for the state bank at some other location. All transactions of a bank office shall be immediately transmitted to the principal place of business or other bank office authorized under subsection 1 of the state bank which operates the office, and no current recordkeeping functions shall be maintained at a bank office other than the bank office authorized under subsection 1, except to the extent the state bank which operates the office deems it desirable to keep there duplicates of the records kept at the principal place of business or authorized bank office of the state bank.

3. Notwithstanding any of the other provisions of this section, original trust recordkeeping functions may be centrally located at an authorized bank office, and original loan documentation recordkeeping functions may be located at an authorized bank office or at the office of the holding company of a state bank, subject to the approval of the superintendent.

95 Acts, ch 32, §1
Section amended

524.1202 Location of offices.

The location of any new bank office, or any change of location of a previously established bank office, shall be subject to the approval of the superintendent. No state bank shall establish a bank office outside the boundaries of the counties contiguous to or cornering upon the county in which the principal place of business of the state bank is located.

1. Except as otherwise provided in subsection 2 of this section, no state bank shall establish a bank office outside the corporate limits of a municipal corporation or in a municipal corporation in which there is already an established state or national bank or office, however the subsequent chartering and establishment of any state or national bank, through the opening of its principal place of business within the municipal corporation where the bank office is located, shall not affect the right of the bank office to continue in operation in that municipal corporation. The existence and continuing operation of a bank office shall not be affected by the subsequent discontinuance of a municipal corporation pursuant to the provisions of sections 368.11 to 368.22. A bank office existing and operating on July 1, 1976, which is not located within the confines of a municipal corporation, shall be allowed to continue its existence and operation without regard to this subsection.

2. *a.* A state bank may establish bank offices within the municipal corporation or urban complex in which the principal place of business of the bank is located, subject to the following conditions and limitations:

(1) If the municipal corporation or urban complex has a population of one hundred thousand or less according to the most recent federal census, the state bank shall not establish more than four bank offices.

(2) If the municipal corporation or urban complex has a population of more than one hundred thousand but not more than two hundred thousand according to the most recent federal census, the state bank shall not establish more than five bank offices.

(3) If the municipal corporation or urban complex has a population of more than two hundred thousand according to the most recent federal census, the state bank shall not establish more than six bank offices.

b. For purposes of this subsection, "*urban complex*" means the geographic area bounded by the corporate limits of two or more municipal corporations, each of which being contiguous to or cornering upon at least one of the other municipal corporations within the complex. A state bank located in a municipal corporation or urban complex which is located on a boundary of this state and contiguous to a municipal corporation in another state may have one bank office in addition to the number of bank offices permitted by paragraph "a"; provided that nothing contained in this paragraph authorizes a state bank to establish a bank office outside of the boundaries of this state.

c. One such facility located in the proximity of a state bank's principal place of business may be found by the superintendent to be an integral part of the principal place of business, and not a bank office within the meaning of this section. This paragraph does not authorize more than one facility to be found to be an integral part of a bank's principal place of business.

d. One such facility located in the proximity of a state bank's office may be found by the superintendent to be an integral part of the bank office and not a bank office within the meaning of this section. This paragraph does not authorize more than one facility to be found to be an integral part of a bank office.

3. Notwithstanding subsection 1, if the assets of a state or national bank in existence on January 1, 1989, are transferred to a different state or national bank in the state which is located in the same county or a county contiguous to or cornering upon the county in which the principal place of business of the acquired bank is located, the resulting or acquiring bank may convert to and operate as its bank office any one or more of the business locations occupied as the principal place of business or as a bank office of the bank whose assets are so acquired. The limitations on bank office locations contained in unnumbered paragraph 1 of this section, and the limitation on the number of bank offices within the municipality or urban complex of the resulting or acquiring bank contained in subsection 2 shall be applicable to any bank office otherwise authorized by this subsection. A bank office established under the authority of this subsection is subject to the approval of the superintendent, shall be operated in accordance with this chapter relating to the operation of bank offices, and may be augmented by an integral facility when approved under subsection 2, paragraph "d".

95 Acts, ch 148, §95

Subsection 2, paragraph d amended

524.1301 Dissolution by incorporators or initial directors.

A majority of the incorporators or initial directors of a state bank that has not issued shares or has not commenced business may dissolve the state bank by delivering articles of dissolution to the superintendent, together with the applicable filing and recording fees, for filing with the secretary of state that set forth all of the following:

1. The name of the state bank.
2. The date of its incorporation.
3. Either of the following:
 - a. That the state bank has not issued any shares.
 - b. That the state bank has not commenced business.
4. That no debt of the state bank remains unpaid.
5. If shares were issued, that the net assets of the state bank remaining after the payment of all necessary expenses have been distributed to the shareholders.
6. That a majority of the incorporators or initial directors authorized the dissolution.

95 Acts, ch 148, §96

Section stricken and rewritten

524.1303 Voluntary dissolution after commencement of business.

1. A state bank which has commenced business may propose to voluntarily dissolve upon the affirmative vote of the holders of at least a majority of the shares entitled to vote on the voluntary dissolution, adopting a plan of dissolution involving both a provision for acquisition of its assets and assumption of its liabilities by another state bank, national bank, or other financial institution insured by the federal deposit insurance corporation and a provision for continuance of its business if acquisition of its assets and assumption of its liabilities is not effected, or any other plan of dissolution providing for full payment of its liabilities.

2. Upon acceptance for processing of an application for approval of a plan of dissolution on forms prescribed by the superintendent, the superintendent shall conduct such investigation as the superintendent may deem necessary to determine whether the plan adequately protects the interests of depositors, other creditors and shareholders and, if the plan involves an acquisition of assets and assumption of liabilities by another state bank, whether such acquisition and assumption would be consistent with adequate and sound banking and in the public interest, on the basis of factors substantially similar to those set forth in section 524.1403, subsection 1, paragraph "d".

3. Within thirty days after the application for dissolution involving a provision of acquisition of the state bank's assets and assumption of its liabilities by another state bank is accepted for processing, the dissolving bank shall publish once each week for two consecutive weeks a notice of the proposed transaction. The notice shall be published in a newspaper of general circulation published in the municipal cor-

poration or unincorporated area in which the dissolving bank has its principal place of business, and in the municipal corporation or unincorporated area in which the acquiring state bank has its principal place of business, or if there is none, a newspaper of general circulation published in the county or counties, or in a county adjoining the county or counties, in which the dissolving bank and the acquiring bank have their principal place of business. The notice shall be on forms provided by the superintendent, and proof of publication of the notice shall be delivered to the superintendent.

4. Within thirty days after the date of the second publication of the notice, any interested person may submit to the superintendent written comments and data on the application. The superintendent may extend the thirty-day comment period if, in the superintendent's judgment, extenuating circumstances exist.

5. Within thirty days after the date of the second publication of the notice, any interested person may submit to the superintendent a written request for a hearing on the application. The request shall state the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation to the superintendent. If the reasons are related to factual disputes, the disputes shall be described. Comments challenging the legality of an application shall be submitted separately in writing and shall not be considered at a hearing conducted pursuant to this section. Written requests for hearings shall be evaluated by the superintendent, who may grant or deny such requests in whole or in part. A hearing request shall generally be granted only if it is determined that written submissions would be inadequate or that a hearing would otherwise be beneficial to the decision-making process. A hearing may be limited to issues considered material by the superintendent.

6. If a request for a hearing has been made and denied, the superintendent shall notify the applicant and all interested persons and shall state the reasons for the denial. Interested persons may submit to the superintendent, with simultaneous copies to the applicant, additional written comments or information on the application within fourteen days after the date of the notice of denial. The applicant shall be provided an additional seven days, after the fourteen-day deadline has expired, within which to respond to any comments submitted within the fourteen-day period. The superintendent may waive this seven-day period upon request by the applicant. A copy of any response submitted by the applicant shall also be mailed simultaneously by the applicant to the interested persons.

95 Acts, ch 148, §97
Section amended

524.1304 Voluntary dissolution — approval.

1. Within ninety days after acceptance of the application for processing, the superintendent shall approve or disapprove the application for voluntary

dissolution on the basis of the superintendent's investigation. As a condition of receiving the decision of the superintendent with respect to the application, the applying state bank shall reimburse the superintendent for all expenses incurred by the superintendent in connection with the application. The superintendent shall give to the applying state bank written notice of the superintendent's decision. The decision of the superintendent shall be subject to judicial review pursuant to chapter 17A.

2. Upon approval of the plan of voluntary dissolution by the superintendent, the superintendent shall file with the secretary of state articles of dissolution prepared by the applicant in conformance with section 524.1304A. Upon filing of the articles of dissolution with the secretary of state, the state bank shall cease to accept deposits or carry on its business, except insofar as may be necessary for the proper winding up of the business of the state bank in accordance with the approved plan of dissolution.

3. If applicable state or federal laws require approval by an appropriate state or federal agency, the superintendent may withhold delivery of the approved articles of dissolution until the superintendent receives notice of the decision of such agency. If the final approval of the agency is not given within six months of the superintendent's approval, then the superintendent shall notify the applying state bank that the approval of the superintendent has been rescinded for that reason.

95 Acts, ch 148, §98
Section stricken and rewritten

524.1304A Articles of dissolution.

1. At any time after the dissolution of a state bank is authorized, the state bank may dissolve by delivering to the superintendent for filing with the secretary of state articles of dissolution setting forth all of the following:

- a. The name of the state bank.
- b. The date dissolution was authorized.
- c. The number of votes entitled to be cast by the shareholders on the proposal to dissolve.
- d. The total number of shareholder votes cast for and against dissolution, or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.
- e. If voting by voting groups was required, the information required by paragraphs "c" and "d" must be separately provided for each voting group entitled to vote separately on the plan to dissolve.
- f. That all debts, obligations, and liabilities of the state bank will be paid or otherwise discharged or that adequate provision will be made for such discharge.
- g. That all the remaining property and assets of the state bank will be distributed among its shareholders in accordance with their respective rights and interests.
- h. That there are no legal actions pending against the state bank in any court or that adequate provi-

sion has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending legal action.

2. A state bank is dissolved upon the effective date of its articles of dissolution.

95 Acts, ch 148, §99
NEW section

524.1305 Voluntary dissolution proceedings — winding up.

1. The board of directors shall have full power to wind up and settle the affairs of a state bank in voluntary dissolution proceedings, including the power to do all of the following:

- a. Collecting the assets of the state bank.
- b. Disposing of its properties that will not be distributed in kind to its shareholders.
- c. Discharging or making provision for discharging its liabilities.
- d. Distributing its remaining property among its shareholders according to their interests.
- e. Doing every other act necessary to wind up and liquidate its business and affairs.

2. Dissolution of a state bank does not result in any of the following:

- a. Transferring title to the state bank's property.
- b. Preventing transfer of its shares or securities, although the authorization to dissolve may provide for closing the state bank's share transfer records.
- c. Subjecting its directors or officers to standards of conduct different from those prescribed by this chapter prior to dissolution.
- d. Changing quorum or voting requirements for its board of directors or shareholders; changing provisions for selection, resignation, or removal of its directors or officers or both; or changing provisions for amending its bylaws.
- e. Preventing commencement of a proceeding by or against the state bank in its name.
- f. Abating or suspending a proceeding pending by or against the state bank on the effective date of dissolution.

3. Within thirty days after filing of the articles of dissolution with the secretary of state, the state bank shall give notice of its dissolution:

- a. By mail to each depositor and creditor, except those as to whom the liability of the state bank has been assumed by another financial institution insured by the federal deposit insurance corporation pursuant to the plan, at their last address of record as shown upon the books of the bank, including a statement of the amount shown by the books of the state bank to be due to such depositor or creditor and a demand that any claim for a greater amount be filed with the state bank any time before a specified date at least ninety days after the date of the notice.

- b. By mail to each lessee of a safe-deposit box and each customer for whom property is held in safekeeping, except those as to whom the liability of the state bank has been assumed by another financial institution insured by the federal deposit insurance corporation pursuant to the plan, at their last ad-

dress of record as shown upon the books of the state bank, including a demand that all property held in a safe-deposit box or held in safekeeping by the state bank be withdrawn by the person entitled to the property before a specified date which is at least ninety days after the date of the notice.

c. By mail to each person, at the person's last known address as shown upon the books of the state bank, interested in funds held in a fiduciary account or other representative capacity.

d. By a conspicuous posting at each office of the state bank.

e. By such publication as the superintendent may prescribe.

4. As soon after the approval of the plan of dissolution and the filing of the articles of dissolution as feasible, the state bank shall resign all fiduciary appointments and take such action as may be necessary to settle its fiduciary accounts.

5. All known depositors and creditors shall be paid promptly after the date specified in the notice given under paragraph "a" of subsection 3 of this section. Unearned portions of rentals for safe-deposit boxes shall be rebated to the lessees thereof.

6. Safe-deposit boxes, the contents of which have not been removed by the owners after the date specified in the notice given under paragraph "b" of subsection 3 of this section, shall be opened under the supervision of the superintendent and the contents placed in sealed packages which, together with unclaimed property held by the state bank in safekeeping, shall be transmitted to the treasurer of state. Amounts due to depositors who are unknown, or who are under a disability and there is no person legally competent to receive the amount, or who cannot be found after the exercise of reasonable diligence, shall be transmitted to the treasurer of state, together with a statement giving the name of the person, if known, entitled to the amount, the person's last known address, the amount due the person, and other information about the person as the treasurer of state may reasonably require. All property transmitted to the treasurer of state pursuant to this subsection shall be treated as abandoned, retained by the treasurer of state, and subject to claim, in the manner provided for in sections 556.14 to 556.21. All amounts due creditors described in section 490.1440 shall be deposited with the treasurer of state in accordance with that section. Such amounts shall be retained by the treasurer of state and are subject to claim in the manner provided for in section 490.1440.

7. Upon approval by the superintendent, assets remaining after the performance of all obligations of the state bank under subsections 4, 5, and 6 of this section shall be distributed to its shareholders according to their respective rights and preferences. Partial distributions to shareholders may be made prior to such time only if, and to the extent, approved by the superintendent. All amounts due shareholders described in section 490.1440 shall be deposited with the treasurer of state in accordance with that section. Such amounts shall be retained by the treasurer of

state and are subject to claim in the manner provided for in said section 490.1440.

8. During the course of dissolution proceedings the state bank shall make such reports as the superintendent may require, and shall continue to be subject to the provisions of this chapter, including those relating to examination of state banks, until completion of the dissolution of the state bank.

9. If at any time during the course of dissolution proceedings the superintendent finds that the assets of the state bank will not be sufficient to discharge its obligations, the superintendent shall apply to the district court for appointment as receiver in the manner required by section 524.1310, and the dissolution shall thereafter be treated as an involuntary dissolution in accordance with the terms of that section and sections 524.1311 and 524.1312.

95 Acts, ch 148, §100
 Subsection 1 amended
 NEW subsection 2 and former subsections 2-8 renumbered as 3-9
 Subsections 3 and 4 amended

524.1306 Revocation of voluntary dissolution proceedings.

1. A state bank may, at any time prior to the filing of the articles of dissolution with the secretary of state, revoke voluntary dissolution proceedings as provided for in section 490.1404.

2. The statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the state bank, shall be delivered to the superintendent, together with the applicable filing and recording fee, who shall, if the superintendent finds that they satisfy the requirements of this section, deliver them to the secretary of state for filing and recording in the secretary of state's office, and the same shall be filed and recorded in the office of the county recorder.

95 Acts, ch 148, §101
 Subsection 1 amended

524.1307 Articles of dissolution. Repealed by 95 Acts, ch 148, § 135. See § 524.1304A.

524.1308 Certificate of dissolution. Repealed by 95 Acts, ch 148, § 135. See § 524.1304A.

524.1308A Known claims against dissolved state bank.

1. A dissolved state bank may dispose of the known claims against it pursuant to this section.

2. The dissolved state bank shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must include all of the following:

- a. A description of information that must be included in a claim.
- b. The mailing address where a claim may be sent.
- c. The deadline for submitting a claim, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved state bank must receive the claim.

d. A statement that the claim will be barred if not received by the deadline.

3. A claim against the dissolved state bank is barred if either of the following occur:

a. A claimant who was given written notice under subsection 2 does not deliver the claim to the dissolved state bank by the deadline.

b. A claimant whose claim was rejected by the dissolved state bank does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

4. For purposes of this section, "claim" does not include a contingent liability or a claim based upon an event occurring after the effective date of dissolution.

95 Acts, ch 148, §102
 NEW section

524.1308B Unknown claims against dissolved state bank.

1. A dissolved state bank may publish notice of its dissolution and request that persons with claims against the state bank present them in accordance with the notice.

2. A notice made pursuant to this section must satisfy all of the following requirements:

a. Be published at least once in a newspaper of general circulation in the county where the dissolved state bank's principal office is located.

b. Include a description of the information that must be included in a claim and provide a mailing address where the claim may be sent.

c. Include a statement that a claim against the state bank will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice.

3. If the dissolved state bank publishes a newspaper notice pursuant to subsection 2, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved state bank within two years after the publication date of the newspaper notice:

a. A claimant who did not receive written notice under section 524.1308A.

b. A claimant whose claim was timely sent to the dissolved state bank but not acted on.

c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

4. A claim may be enforced under this section as follows:

a. Against the dissolved state bank, to the extent of its undistributed assets.

b. If the assets have been distributed in liquidation, against a shareholder of the dissolved state bank to the extent of the shareholder's pro rata share of the claim or the state bank's assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section shall not exceed the total amount of assets distributed to the shareholder in liquidation.

95 Acts, ch 148, §103
 NEW section

524.1309 Becoming subject to chapter 490.

In lieu of the dissolution procedure prescribed in sections 524.1303 to 524.1306, a state bank may cease to carry on the business of banking and, after compliance with this section, continue as a corporation subject to chapter 490.

1. A state bank which has commenced business may propose to voluntarily cease to carry on the business of banking and become a corporation subject to chapter 490 upon the affirmative vote of the holders of at least a majority of the shares entitled to vote on such proposal, adopting a plan involving both a provision for acquisition of its assets and assumption of its liabilities by another state bank, national bank, or other financial institution insured by the federal deposit insurance corporation, and a provision for continuance of its business if acquisition of its assets and assumption of its liabilities is not effected, or any other plan providing for the cessation of banking business and the payment of its liabilities.

2. The application to the superintendent for approval of a plan described in subsection 1 of this section shall be treated by the superintendent in the same manner as an application for approval of a plan of dissolution under subsection 2 of section 524.1303, and shall be subject to subsection 3 of section 524.1303.

3. Immediately upon adoption and approval of a plan to voluntarily cease to carry on the business of banking and become a corporation subject to chapter 490, the state bank shall deliver to the superintendent a plan to cease the business of banking and become a corporation subject to chapter 490, which shall be signed by two of its duly authorized officers and shall contain the name of the state bank, the post office address of its principal place of business, the name and address of its officers and directors, the number of shares entitled to vote on the plan and the number of shares voted for or against the plan, respectively, the nature of the business to be conducted by the corporation under chapter 490, and the general nature of the assets to be held by the corporation.

4. Upon approval of the plan by the superintendent, the state bank shall immediately surrender to the superintendent its authorization to do business as a bank and shall cease to accept deposits and carry on the banking business except insofar as may be necessary for it to complete the settlement of its affairs as a state bank in accordance with subsection 5.

5. The board of directors has full power to complete the settlement of the affairs of the state bank. Within thirty days after approval by the superintendent of the plan to cease the business of banking and become a corporation subject to chapter 490, the state bank shall give notice of its intent to persons identified in section 524.1305, subsection 4, in the manner provided for in that subsection. In completing the settlement of its affairs as a state bank the state bank shall also follow the procedure prescribed in section 524.1305, subsections 4, 5, and 6.

6. Upon completion of all the requirements of this

section, the state bank shall deliver to the superintendent articles of intent to be subject to chapter 490, together with the applicable filing and recording fees, which shall set forth that the state bank has complied with this section, that it has ceased to carry on the business of banking, and the information required by section 490.202 relative to the contents of articles of incorporation under chapter 490. If the superintendent finds that the state bank has complied with this section and that the articles of intent to be subject to chapter 490 satisfy the requirements of this section, the superintendent shall deliver them to the secretary of state for filing and recording in the secretary of state's office, and they shall be filed and recorded in the office of the county recorder.

7. Upon the filing of the articles of intent to be subject to chapter 490, the state bank shall cease to be a state bank subject to this chapter, and shall cease to have the powers of a state bank subject to this chapter and shall become a corporation subject to chapter 490. The secretary of state shall issue a certificate as to the filing of the articles of intent to be subject to chapter 490, and send the certificate to the corporation or its representative. The articles of intent to be subject to chapter 490 shall be the articles of incorporation of the corporation. The provisions of chapter 490 becoming applicable to a corporation formerly doing business as a state bank shall not affect any right accrued or established, or liability or penalty incurred under this chapter prior to the filing with the secretary of state of the articles of intent to be subject to chapter 490.

8. A shareholder of a state bank who objects to adoption by the state bank of a plan to cease to carry on the business of banking and to continue as a corporation subject to chapter 490, is entitled to the rights and remedies of a dissenting shareholder provided for in chapter 490, division XIII.

9. A state bank, at any time prior to the approval of the articles of intent to become subject to chapter 490, may revoke the proceedings in the manner prescribed by section 524.1306.

95 Acts, ch 148, §104-106

Unnumbered paragraph 1 amended

Subsections 1, 3, 4, and 5 amended

Subsection 6 stricken and former subsections 7-10 renumbered as 6-9

Subsection 9 amended

524.1314 Survival of rights and remedies after dissolution or expiration — preservation of records.

1. The dissolution of a state bank, or the expiration of its period of duration, shall not take away or impair any remedy available to or against such state bank, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred prior to such dissolution or expiration, if action or other proceeding thereon is commenced within two years after the date of such dissolution or expiration. Any such action or proceeding by or against the state bank may be prosecuted or defended by the state bank in its corporate name. The shareholders, directors and officers shall have power to take such corporate or

other action as shall be appropriate to protect such remedy, right or claim.

2. Subsequent to the dissolution of a state bank, other than through the adoption of a plan involving a provision for acquisition of its assets and assumption of its liabilities by another state bank, national bank, or other financial institution insured by the federal deposit insurance corporation, the superintendent may assume custody of the records of the state bank and, if so, shall retain them in accordance with the provisions of section 524.221. The superintendent may make copies of such records in accordance with the provisions of section 524.221, subsection 1.

95 Acts, ch 148, §107
Subsection 2 amended

524.1401 Authority to merge.

1. Upon compliance with the requirements of this chapter, one or more state banks, one or more national banks, one or more state associations, one or more federal associations, one or more corporations, or any combination of these entities, with the approval of the superintendent, may merge into a state bank.

2. Upon compliance with the requirements of this chapter, one or more state banks may merge into a national bank. The authority of a state bank to merge into a national bank is subject to the condition that at the time of the transaction the laws of the United States shall authorize a national bank located in this state, without approval by the comptroller of the currency of the United States, to merge into a state bank under limitations no more restrictive than those contained in this chapter with respect to the merger of a state bank into a national bank.

3. Upon compliance with the requirements of this chapter and chapter 534, one or more state banks may merge with one or more state associations or federal associations. The authority of a state bank to merge into a state or federal association is subject to the conditions the laws of the United States authorize at the time of the transaction.

4. As used in this section, the term "merger" or "merge" means any plan by which the assets and liabilities of an entity are combined with those of one or more other entities, including transactions in which one of the corporate entities survives and transactions in which a new corporate entity is created.

95 Acts, ch 148, §108
Section amended

524.1402 Requirements for a merger.

The requirements for a merger which must be satisfied by the parties to the merger are as follows:

1. The parties shall adopt a plan stating all of the following:

a. The names of the parties proposing to merge and the name of the bank into which they propose to merge, which is the "resulting bank".

b. The terms and conditions of the proposed merger.

c. The manner and basis of converting the shares of each party into shares, obligations, or other securities of the resulting bank or of any other corporation, or, in whole or in part, into cash or other property.

d. The rights of the shareholders of each of the parties.

e. An agreement concerning the merger.

f. Such other provisions with respect to the proposed merger which are deemed necessary or desirable.

2. In the case of a state bank which is a party to the plan, if the proposed merger will result in a state bank subject to this chapter, adoption of the plan by such state bank requires the affirmative vote of at least a majority of the directors and approval by the shareholders, in the manner and according to the procedures prescribed in section 490.1103, at a meeting called in accordance with the terms of that section. In the case of a national bank, or if the proposed merger will result in a national bank, adoption of the plan by each party to the merger shall require the affirmative vote of at least such directors and shareholders whose affirmative vote on the plan is required under the laws of the United States. Subject to applicable requirements of the laws of the United States in a case in which a national bank is a party to a plan, any modification of a plan which has been adopted shall be made by any method provided in the plan, or in the absence of such provision, by the same vote as required for adoption.

3. If a proposed merger will result in a state bank, application for the required approval by the superintendent shall be made in the manner prescribed by the superintendent. There shall also be delivered to the superintendent, when available, the following:

a. Articles of merger.

b. Applicable fees payable to the secretary of state, as specified in section 490.122, for the filing and recording of the articles of merger.

c. If there is any modification of the plan at any time prior to the approval by the superintendent under section 524.1403, an amendment of the application and, if necessary, of the articles of merger, signed in the same manner as the originals, setting forth the modification of the plan, the method by which the modification was adopted and any related change in the provisions of the articles of merger.

d. Proof of publication of the notice required by subsection 4.

4. If a proposed merger will result in a state bank, within thirty days after the application for merger is accepted for processing, the parties to the plan shall publish, once each week for two consecutive weeks, a notice of the proposed transaction. The notices shall be published in a newspaper of general circulation published in the municipal corporation or unincorporated area in which each party to the plan has its principal place of business, or if there is none, in a newspaper of general circulation published in the county, or in a county adjoining the county, in which each party to the plan has its principal place of

business. The notice shall be on forms prescribed by the superintendent and shall set forth the names of the parties to the plan and the resulting state bank, the location and post office address of the principal place of business of the resulting state bank and of each office to be maintained by the resulting state bank, and the purpose or purposes of the resulting state bank.

5. Within thirty days after the date of the second publication of the notice required under subsection 4, any interested person may submit to the superintendent written comments and data on the application. Comments challenging the legality of an application shall be submitted separately in writing. The superintendent may extend the thirty-day comment period if, in the superintendent's judgment, extenuating circumstances exist.

6. Within thirty days after the date of the second publication of the notice required under subsection 4, any interested person may submit to the superintendent a written request for a hearing on the application. The request shall state the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation to the superintendent. If the reasons are related to factual disputes, the disputes shall be described. Written requests for hearings shall be evaluated by the superintendent, who may grant or deny such requests in whole or in part. A hearing request shall generally be granted only if it is determined that written submissions would be inadequate or that a hearing would otherwise be beneficial to the decision-making process. A hearing may be limited to issues considered material by the superintendent.

7. If a request for a hearing is denied, the superintendent shall notify the applicant and all interested persons and shall state the reasons for the denial. Interested persons may submit to the superintendent, with simultaneous copies to the applicant, additional written comments or data on the application within fourteen days after the date of the notice of denial. The applicant shall be provided an additional seven days, after the fourteen-day deadline has expired, within which to respond to any comments submitted within the fourteen-day period. The superintendent may waive this seven-day period upon request by the applicant. A copy of any response submitted by the applicant shall also be mailed simultaneously by the applicant to the interested persons.

8. The articles of merger shall be signed by two duly authorized officers of each party to the plan and shall contain all of the following:

a. The names of the parties to the plan, and of the resulting state bank.

b. The location and the post office address of the principal place of business of each party to the plan, and of each additional office maintained by the parties to the plan, and the location and post office address of the principal place of business of the resulting state bank, and of each additional office to be maintained by the resulting state bank.

c. The votes by which the plan was adopted, and the date and place of each meeting in connection with such adoption.

d. The number of directors constituting the board of directors, and the names and addresses of the individuals who are to serve as directors until the next annual meeting of the shareholders or until their successors be elected and qualify.

e. Any amendment of the articles of incorporation of the resulting state bank.

f. The plan of merger.

9. If a proposed merger will result in a national bank, a state bank which is a party to the plan shall do all of the following:

a. Notify the superintendent of the proposed merger.

b. Provide such evidence of the adoption of the plan as the superintendent may request.

c. Notify the superintendent of any abandonment or disapproval of the plan.

d. File with the superintendent and with the secretary of state evidence of approval of the merger by the comptroller of the currency of the United States.

e. Notify the superintendent of the date upon which the merger is to become effective.

95 Acts, ch 148, §109

Section amended

Former subsections 5 and 6 editorially renumbered as 8 and 9

524.1403 Approval of merger by superintendent.

1. Upon receipt of an application for approval of a merger and of the supporting items required by section 524.1402, subsection 3, the superintendent shall conduct such investigation as the superintendent deems necessary to ascertain the following:

a. The articles of merger and supporting items satisfy the requirements of this chapter.

b. The plan and any modification of the plan adequately protects the interests of depositors, other creditors and shareholders.

c. The requirements for a merger under all applicable laws have been satisfied and the resulting state bank would satisfy the requirements of this chapter with respect to it.

d. The merger would be consistent with adequate and sound banking and in the public interest on the basis of the financial history and condition of the parties to the plan, including the adequacy of the capital structure of the resulting state bank, the character of the management of the resulting state bank, the potential effect of the merger on competition, and the convenience and needs of the area primarily to be served by the resulting state bank.

2. Within one hundred eighty days after acceptance of the application for processing, or within an additional period of not more than sixty days after receipt of an amendment of the application, the superintendent shall approve or disapprove the application on the basis of the investigation. The plan shall not be modified at any time after approval of the application by the superintendent.

If the superintendent finds that the superintendent must act immediately on the pending application in order to protect the interests of depositors or the assets of any party to the plan, the superintendent may proceed without requiring publication of the notice required under section 524.1402, subsection 4. As a condition of receiving the decision of the superintendent with respect to the pending application, the parties to the plan shall reimburse the superintendent for all the expenses incurred in connection with the application. The superintendent shall give to the parties to the plan written notice of the decision and, in the event of disapproval, a statement of the reasons for the decision. The decision of the superintendent shall be subject to judicial review pursuant to chapter 17A.

95 Acts, ch 148, §110
Section amended

524.1404 Procedure after approval by the superintendent — issuance of certificate of merger.

If applicable state or federal laws require the approval of the merger by a federal or state agency, the superintendent may withhold delivery of the approved articles of merger until the superintendent receives notice of the decision of such agency. If the final approval of the agency is not given within six months of the superintendent's approval, the superintendent shall notify the parties to the plan that the approval of the superintendent has been rescinded for that reason. If such agency gives its approval, the superintendent shall deliver the articles of merger, with the superintendent's approval indicated on the articles, to the secretary of state, and shall notify the parties to the plan. The receipt of the approved articles of merger by the secretary of state constitutes filing of the articles of merger with that office. The secretary of state shall record the articles of merger, and the articles shall be filed and recorded in the office of the county recorder in each county in which the parties to the plan had previously maintained a principal place of business. On the date upon which the merger is effective the secretary of state shall issue a certificate of merger and send the same to the resulting state bank and a copy of the certificate of merger to the superintendent.

95 Acts, ch 148, §111
Section amended

524.1405 Effect of merger.

1. The merger is effective upon the filing of the articles of merger with the secretary of state, or at any later date and time as specified in the articles of merger. The certificate of merger is conclusive evidence of the performance of all conditions precedent to the merger, and of the existence or creation of the resulting state bank, except as against the state.

2. When a merger takes effect all of the following apply:

a. Every other financial institution to the merger merges into the surviving financial institution and

the separate existence of every party except the surviving financial institution ceases.

b. The title to all real estate and other property owned by each party to the merger is vested in the surviving party without reversion or impairment.

c. The surviving party has all liabilities of each party to the merger.

d. A proceeding pending against any party to the merger may be continued as if the merger did not occur or the surviving party may be substituted in the proceeding for the party whose existence ceased.

e. The articles of incorporation of the surviving party are amended to the extent provided in the articles of merger.

f. The shares of each party to the merger that are to be converted into shares, obligations, or other securities of the surviving party or any other corporation or into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under division XIII of this chapter.

95 Acts, ch 148, §112, 113
Subsection 1 amended
Subsections 2 and 3 stricken and rewritten as subsection 2

524.1406 Rights of dissenting shareholders.

1. A shareholder of a state bank, which is a party to a proposed merger plan which will result in a state bank subject to this chapter, who objects to the plan is entitled to the rights and remedies of a dissenting shareholder as provided in chapter 490, division XIII.

2. If a shareholder of a national bank which is a party to a proposed merger plan which will result in a state bank, or a shareholder of a state bank which is a party to a plan which will result in a national bank, objects to the plan and complies with the requirements of the applicable laws of the United States, the resulting state bank or national bank, as the case may be, is liable for the value of the shareholder's shares as determined in accordance with such laws of the United States.

95 Acts, ch 148, §114
Section amended

524.1407 Succession to fiduciary accounts and appointments — application for appointment of new fiduciary. Repealed by 95 Acts, ch 148, § 135. See § 524.1009.

524.1408 Merger of corporation substantially owned by a state bank.

A state bank owning at least ninety percent of the outstanding shares, of each class, of another corporation which it is authorized to own under this chapter, may merge the other corporation into itself without approval by a vote of the shareholders of either the state bank or the subsidiary corporation. The board of directors of the state bank shall approve a plan of merger, mail to shareholders of record of the subsidiary corporation, and prepare and execute articles of merger in the manner provided for in section 490.1104. The articles of merger, together with the applicable filing and recording fees, shall be deliv-

ered to the superintendent who shall, if the superintendent approves of the proposed merger and if the superintendent finds the articles of merger satisfy the requirements of this section, deliver them to the secretary of state for filing and recording in the secretary of state's office, and they shall be filed in the office of the county recorder. The secretary of state upon filing the articles of merger shall issue a certificate of merger and send the certificate to the state bank and a copy of it to the superintendent.

95 Acts, ch 148, §115
Section amended

524.1411 Articles of conversion.

The articles of conversion shall be signed by two duly authorized officers of the national bank and shall contain:

1. The name of the national bank and the name of the resulting state bank.
2. The location and post office address of its principal place of business and of each additional office, and the location and post office address of the principal place of business of the resulting state bank and of each additional office to be maintained by the resulting state bank.
3. The votes by which the plan of conversion was adopted and the date and place of each meeting in connection with the adoption.
4. The number of directors constituting the board of directors, and the names and addresses of the persons who are to serve as directors until the next annual meeting of shareholders or until successors be elected and qualify.
5. The provisions required in the articles of incorporation by section 524.302, subsection 1, paragraphs "c" and "d", and subsection 2, paragraph "b".
6. The plan of conversion.

95 Acts, ch 148, §116
Subsections 3 and 5 amended

524.1412 Publication of notice.

Within thirty days after the application for conversion has been accepted for processing, the national bank shall publish a notice of the delivery of the articles of conversion to the superintendent once each week for two successive weeks in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the national bank has its principal place of business, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the national bank has its principal place of business. The notice shall set forth all of the following:

1. The name of the national bank and the name of the resulting state bank.
2. The location and post office address of its principal place of business.
3. A statement that articles of conversion have been delivered to the superintendent.
4. The purpose or purposes of the resulting state bank.

5. The date of delivery of the articles of conversion to the superintendent.

95 Acts, ch 148, §117
Section amended

524.1413 Approval of conversion by superintendent.

Upon acceptance for processing of an application for approval of a conversion, the superintendent shall conduct such investigation as the superintendent deems necessary to ascertain the following:

1. The articles of conversion and supporting items satisfy the requirements of this chapter.
2. The plan adequately protects the interests of depositors.
3. The requirements for a conversion under all applicable laws have been satisfied and the resulting state bank would satisfy the requirements of this chapter applicable to it.
4. The resulting state bank will possess an adequate capital structure.

Within ninety days after the application has been accepted for processing, the superintendent shall approve or disapprove the application on the basis of the investigation. As a condition of receiving the decision of the superintendent with respect to the application, the national bank shall reimburse the superintendent for all expenses incurred in connection with the application. The superintendent shall give the national bank written notice of the decision and, in the event of disapproval, a statement of the reasons for the decision. If the superintendent approves the application, the superintendent shall deliver the articles of conversion, with the superintendent's approval indicated on the articles of conversion, to the secretary of state. The decision of the superintendent shall be subject to judicial review pursuant to chapter 17A. Notwithstanding the terms of the Iowa administrative procedure Act, chapter 17A, a petition for judicial review must be filed within thirty days after the superintendent notifies the national bank of the superintendent's decision.

95 Acts, ch 148, §118
Section amended

524.1414 Receipt by secretary of state — county recorder.

The receipt of the approved articles of conversion by the secretary of state constitutes filing of the articles of conversion with that office. The secretary of state shall record the articles of conversion and the articles shall be filed and recorded in the office of the county recorder in the county in which the resulting state bank has its principal place of business.

95 Acts, ch 148, §119
Section amended

524.1415 Effect of filing of articles of conversion with secretary of state.

1. The conversion is effective upon the filing of the articles of conversion with the secretary of state, or at any later date and time as specified in the articles of conversion. The certificate of conversion is

conclusive evidence of the performance of all conditions required by this chapter for conversion of a national bank into a state bank, except as against the state.

2. When a conversion becomes effective, the existence of the national bank shall continue in the resulting state bank which shall have all the property, rights, powers and duties of the national bank, except that the resulting state bank shall have only the authority to engage in such business and exercise such powers as it would have, and shall be subject to the same prohibitions and limitations to which it would be subject, upon original incorporation under this chapter. The articles of incorporation of the resulting state bank shall be the provisions stated in the articles of conversion.

3. No liability of the national bank or of its shareholders, directors or officers shall be affected, nor shall any lien on any property of the national bank be impaired by the conversion. Any claim existing or action pending by or against the national bank may be prosecuted to judgment as if the conversion had not taken place, or the resulting state bank may be substituted in its place.

4. The title to all real estate and other property owned by the converting national bank is vested in the resulting state bank without reversion or impairment.

95 Acts, ch 148, §120, 121
Subsection 1 amended
NEW subsection 4

524.1417 Rights of dissenting shareholder of converting state or national bank.

1. A shareholder of a state bank which converts into a national bank who objects to the plan of conversion is entitled to the rights and remedies of a dissenting shareholder as provided in chapter 490, division XIII.

2. If a shareholder of a national bank, which converts into a state bank, objects to the plan of conversion and complies with the requirements of applicable laws of the United States, the resulting state bank is liable for the value of the shareholder's shares as determined in accordance with such laws of the United States.

95 Acts, ch 148, §122, 123
Subsection 1 stricken and rewritten
Subsection 2 amended

524.1418 Succession to fiduciary accounts and appointments — application for appointment of new fiduciary.

The provisions of section 524.1009 apply to a resulting state or national bank after a conversion with the same effect as though the state or national bank were a party to a plan of merger, and the conversion were a merger, within the provisions of that section.

95 Acts, ch 148, §124
Section amended

524.1419 Offices of a resulting state bank.

If a merger or conversion results in a state bank subject to the provisions of this chapter, the resulting

state bank, after the effective date of the merger or conversion, shall be subject to the provisions of sections 524.1201, 524.1202, and 524.1203 relating to the bank offices.

95 Acts, ch 148, §125
Section amended

524.1420 Nonconforming assets of resulting state bank.

If a merger or conversion results in a state bank subject to the provisions of this chapter, and the resulting state bank has assets which do not conform with the provisions of this chapter, the superintendent may allow the resulting state bank a reasonable time to conform with state law.

95 Acts, ch 148, §126
Section amended

524.1501 Authority to amend.

A state bank, with the approval of the superintendent and in the manner provided in this chapter, may amend its articles of incorporation in order to make any change in the articles of incorporation so long as the articles of incorporation as amended contain only provisions as might be lawfully contained in the original articles of incorporation at the time of making the amendment.

95 Acts, ch 148, §127
Section amended

524.1503 Voting on amendments by voting groups.

1. The holders of the outstanding shares of a class are entitled to vote as a separate voting group on a proposed amendment if the amendment does any of the following:

a. Increases or decreases the aggregate number of authorized shares of the class.

b. Increases or decreases the par value of the shares of the class.

c. Effects an exchange or reclassification of all or part of the shares of the class into shares of another class or effects a cancellation of all or part of the shares of the class.

d. Effects an exchange or reclassification, or creates the right of exchange, of all or part of the shares of another class into shares of that class.

e. Changes the designation, rights, preferences, or limitations of all or part of the shares of the class.

f. Changes the shares of all or part of the class into a different number of shares of the same class.

g. Creates a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class.

h. Increases the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class.

i. Limits or denies an existing preemptive right of all or part of the shares of the class.

j. Cancels or otherwise affects rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

2. If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection 1, the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

3. If a proposed amendment that entitles two or more series of shares to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series so affected must vote together as a single voting group on the proposed amendment.

4. A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

95 Acts, ch 148, §128
Section stricken and rewritten

524.1504 Articles of amendment.

1. Upon the adoption of an amendment, articles of amendment shall be prepared on forms prescribed by the superintendent, signed by two duly authorized officers of the state bank and shall contain:

- a. The name of the state bank.
- b. The location of its principal place of business.
- c. The amendment adopted, which shall be set forth in full.
- d. The place and date of the meeting of shareholders at which the amendment was adopted, and the kind and period of notice given to the shareholders.
- e. The number of shares entitled to vote on the amendment, and if the shares of any class are entitled to vote thereon as a class, the number of shares of each class.
- f. The number of shares voted for and against such amendment, respectively, and if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment.

2. The articles of amendment shall be delivered to the superintendent together with the applicable fees for the filing and recording of the articles of amendment.

95 Acts, ch 148, §129
Subsection 1, paragraph d amended

524.1506 Certificate of amendment.

1. The secretary of state shall record the articles of amendment, and the articles of amendment shall be filed in the office of the county recorder in the county in which the state bank has its principal place of business. The secretary of state upon the filing of the articles of amendment shall issue a certificate of amendment and send the same to the state bank.

2. Upon the issuance of the certificate of amendment by the secretary of state, the amendment becomes effective and the articles of incorporation are deemed to be amended accordingly.

95 Acts, ch 148, §130
Section amended

524.1507 Change of location of principal place of business. Repealed by 95 Acts, ch 148, § 135. See § 524.312.

524.1508 Restated articles of incorporation.

A state bank may at any time restate its articles of incorporation, which may be amended by the restatement, so long as its articles of incorporation as restated contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making the restatement. Restated articles of incorporation shall be adopted in the following manner:

1. The board of directors shall adopt a resolution setting forth the proposed restated articles of incorporation, which may include an amendment or amendments to the articles of incorporation of the state bank to be made thereby, and directing that the restated articles, including such amendment or amendments, be submitted to a vote at a meeting of shareholders, which may be either an annual meeting or a special meeting.

2. Written or printed notice setting forth the proposed restated articles or a summary of the provisions of the proposed restated articles shall be given to each shareholder of record entitled to vote on the proposed restated articles within the time and in the manner provided in section 524.533. If the meeting be an annual meeting, the proposed restated articles may be included in the notice of such annual meeting. If the restated articles include an amendment or amendments to the articles of incorporation, the notice shall separately set forth such amendment or amendments or a summary of the changes to be effected by the amendment or amendments.

3. At the meeting a vote of the shareholders entitled to vote on the proposed restated articles shall be taken on the proposed restated articles. The proposed restated articles shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote, unless such restated articles include an amendment to the articles of incorporation which, if contained in a proposed amendment to articles of incorporation to be made without restatement of the articles of incorporation, would entitle a class of shares to vote as a class on the proposed restated articles, in which event the proposed restated articles shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote on the proposed restated articles as a class, and of the total shares entitled to vote on the proposed restated articles.

Upon approval, restated articles of incorporation shall be executed by the state bank by its president or vice president and by its cashier or an assistant cashier, and verified by one of the officers signing the restated articles, and shall set forth, as then stated in the articles of incorporation of the state bank and, if the restated articles of incorporation included an amendment or amendments to the articles of incorporation, as so amended, the material and contents described in section 524.302.

The restated articles of incorporation shall set forth also a statement that they correctly set forth the provisions of the articles of incorporation as amended, that they have been duly adopted as required by law and that they supersede the original articles of incorporation and all amendments to the original articles of incorporation.

The restated articles of incorporation shall be delivered to the superintendent together with the applicable fees for the filing and recording of the restated articles of incorporation. The superintendent shall conduct such investigation and give approval or disapproval, as provided in section 524.1505. If the superintendent approves the restated articles of incorporation, the superintendent shall deliver them with the written approval on the restated articles of incorporation to the secretary of state for filing, and the restated articles of incorporation shall be filed in the office of the county recorder. The secretary of state upon filing the restated articles of incorporation shall issue a restated certificate of incorporation and send the certificate to the state bank or its representative.

Upon the issuance of the restated certificate of incorporation by the secretary of state, the restated articles of incorporation including any amendment or amendments to the articles of incorporation are effective and supersede the original articles of incorporation and all amendments to the original articles of incorporation.

95 Acts, ch 148, §131
Section amended

524.1509 Reverse stock split.

A state bank may effect a reverse stock split or similar change in capital structure by renewal, amendment, or restatement of existing articles of incorporation, provided the requirements of the superintendent are satisfied.

95 Acts, ch 148, §132
NEW section

524.1510 Effect of amendment.

An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the state bank, a proceeding to which the state bank is a party, or the existing rights of persons other than shareholders of the state bank. An amendment changing the state bank's name does not abate a proceeding brought by or against the state bank in its former name.

95 Acts, ch 148, §133
NEW section

524.1701 through 524.1703 Repealed by 95 Acts, ch 148, § 135.

524.1806 Banks owned or controlled — officers and directors.

An individual who is a director or an officer of a bank holding company, as specified by section 524.1801, is deemed to be a director or an officer, or both, as the case may be, of each bank so owned or

controlled by that bank holding company, for the purposes of sections 524.612, 524.613 and 524.706.

95 Acts, ch 148, §134
Section amended

524.1905 Superintendent of banking — responsibilities.

1. The superintendent, within thirty days of receipt of an application by a regional bank holding company to make an acquisition as authorized by this division, shall do one of the following:

a. Accept the application for processing if it is substantially complete.

b. Request additional information as may be necessary to complete the application.

c. Return the application if it is substantially incomplete.

2. If an application is accepted for processing, the superintendent shall immediately notify the applicant that the application is accepted for processing and, unless the application is solely to acquire a troubled bank, publish notice of the application in the administrative bulletin.

3. Within thirty days of acceptance of an application for processing, the superintendent shall commence an investigation into the condition of the applicant and the bank or bank holding company proposed to be acquired. The superintendent may request additional information from the applicant and require its production as a condition of approval of the application.

4. The superintendent shall approve or disapprove an application within one hundred eighty days after the filing of the complete application. The time period shall be extended upon request of the applicant.

5. In deciding whether to approve an application for an acquisition under this division, the superintendent shall determine whether the proposed acquisition will promote the general good of the state, making specific written findings on each of the following criteria. The superintendent shall not approve the application unless the superintendent finds that the proposed acquisition will be of benefit to this state upon consideration of all of the following:

a. Will result in the employment of net new funds within the state. The finding as to net new funds shall take into consideration, in addition to the applicant's plans for capital investment, such other factors as its policies on loans, investments, and dividends, and its general business operations, including the range of individual and business services to be offered and the charges for the services.

b. Will maintain a reasonable level of deposits in the acquired bank to be employed within the state.

c. Will result in the enhancement of the acquired bank's ability to meet the credit needs of its entire community, consistent with safe and sound operation of the bank. In making this determination the superintendent shall assess and consider the past performance of the existing bank subsidiaries of the applicant and of the expected future performance of the acquired bank in all of the following areas:

(1) The bank's participation, including investments, in local community development and redevelopment projects or programs.

(2) The bank's origination of residential mortgage loans, housing rehabilitation loans, home improvement and energy conservation loans, student loans, loans to women and minority-owned businesses and small business or small farm loans within its community, or the purchase of such loans originated in its community.

(3) The bank's participation in governmentally insured, guaranteed, or subsidized loan programs for education, housing, small businesses or small farms, such as the Iowa housing finance authority, the small business administration and the United States department of agriculture rural economic and community development or consolidated farm service agency.

(4) The bank's ability to meet various community credit needs based on its financial condition and size, legal or regulatory restrictions or requirements, local economic conditions, and other factors.

(5) Activities conducted by the bank to ascertain the credit needs of its community, including the extent of the bank's efforts to communicate with members of its community regarding the credit services being provided by the bank.

(6) The extent of the bank's marketing and special credit-related programs to make members of the community aware of the credit services offered by the bank.

(7) The extent of participation by the bank's board of directors in formulating the bank's policies and reviewing its performance with respect to the purposes of the federal Community Reinvestment Act.

(8) Any practices intended to discourage applications for types of credit offered by the bank.

(9) The geographic distribution of the bank's credit extensions, credit applications, and credit denials.

(10) The geographic distribution of the bank's demand deposits and time deposits, and the geographic distribution of areas with better than average deposit to loan ratios.

(11) Evidence of prohibited discriminatory or other illegal credit practices.

(12) The bank's record of opening and closing offices and providing services at offices.

(13) Any conviction for a felony within the preceding five years relating to the business of banking by any applicant or its subsidiaries, or any of their current directors or officers.

(14) The extent of foreign loan exposure and disclosure of information relating to such exposure as the superintendent may require.

d. Will not relieve any corporation of any obligation of its charter franchise.

e. Will favorably affect the economy of the state as a whole or any area affected by the proposed transaction.

f. Will not result in banking monopoly or restraint of banking competition in the areas affected.

g. Will favorably affect borrowers or depositors of small sums.

h. Will not involve any violation of law or breach of trust.

i. Will be consistent with the public good and in the interests of the acquired bank's depositors.

j. Will not result in the acquisition of an Iowa bank by a bank or a bank holding company of inadequate safety and soundness and will not result in the impairment of the safety and soundness of the Iowa bank to be acquired.

k. Will result in net new agricultural financing in this state.

l. Will on balance have a positive effect upon the community interests of the communities served by the bank or banks to be acquired. In considering community interest factors, the superintendent may investigate in addition to the effects of the acquisition on shareholders or depositors, the effects of the acquisition on employees, suppliers, creditors, short-term and long-term impact upon community interests, and community development.

6. If an acquisition involves solely a troubled bank, the superintendent may waive or modify one or more limitations or conditions of this division if the superintendent determines in the superintendent's discretion that any or all of the following conditions exist:

a. The troubled bank cannot be sold unless a specific limitation or condition is modified or waived.

b. Modification or waiver of a specific limitation or condition will substantially increase the sale price received to the benefit of depositors or creditors other than shareholders.

c. Modification or waiver of a specific limitation or condition will substantially speed the sale to prevent further loss of capital.

7. The superintendent shall issue an order either approving or disapproving an application. The order shall include findings of fact based upon the application, investigation, public comments, or other submittals or evidence considered. An order disapproving an application shall list the specific reasons for disapproval.

8. Approval shall be conditioned upon the applicant entering into a contract with the superintendent providing that any bank located in this state and owned or controlled by the applicant will be operated in a manner that conforms to any actions, promised to be undertaken by the applicant in its application, to correct any deficiencies in the procedures or operations of the acquired bank, including requirements of subsection 5, which promises were necessary to allow the superintendent to approve the application. As part of such contract, the applicant shall agree that the applicant, as well as any Iowa bank or Iowa bank holding company acquired by the applicant, shall provide reports to and permit examinations of its records by the superintendent to the extent necessary to ensure compliance with the promises referred to in the application.

9. Appeals from a decision of the superintendent shall be pursuant to chapter 17A.

95 Acts, ch 216, §25

Subsection 5, paragraph c, subparagraph (3), reference to federal agency updated

CHAPTER 527

ELECTRONIC TRANSFER OF FUNDS

527.2 Definitions.

As used in this chapter, the following definitions shall apply unless the context otherwise requires:

1. *"Access device"* means a card, code, or other mechanism, or any combination thereof, that may be used by a customer for the purpose of initiating a transaction by means of a satellite terminal which will affect a customer asset account.

2. *"Administrator"* means and includes the superintendent of banking, the superintendent of savings and loan associations, and the superintendent of credit unions within the department of commerce and the supervisor of industrial loan companies within the office of the superintendent of banking. However, the powers of administration and enforcement of this chapter shall be exercised only as provided in sections 527.3, 527.5, subsection 7, 527.11, 527.12, and any other pertinent provision of this chapter.

3. *"Batch basis"* means the delivery of an accumulation of messages representing multiple transactions after completion of the transactions.

4. *"Central routing unit"* means any facility where electronic impulses or other indicia of a transaction originating at a satellite terminal are received and are routed and transmitted to a financial institution, or to a data processing center, or to another central routing unit, wherever located.

5. *"Completion of the transaction"* means when the presence of the customer at a satellite terminal is no longer needed to consummate the sale of goods or services, to grant to the seller the right to receive payment for the goods or services, and to issue a receipt to the customer.

6. *"Customer asset account"* or *"account"* means a demand deposit, share, checking, savings, or other customer account, other than an occasional or incidental credit balance in a credit plan, which represents a liability of the financial institution which maintains such account at a business location or office located in this state, either directly or indirectly for the benefit of a customer.

7. *"Data processing center"* means a facility, wherever located, at which electronic impulses or other indicia of a transaction originating at a satellite terminal are received and are processed in order to enable the satellite terminal to perform any function for which it is designed. However, *"data processing center"* does not include a facility which is directly connected to a satellite terminal and which performs only the functions of direct transmission of all requested transactions from that terminal to a data processing facility without performing any review of the requested transactions for the purpose of categorizing, separating, or routing. *"Categorizing"* means the process of reviewing and grouping of requested electronic funds transfer transactions according to

the source or nature of the requested transaction. *"Separating"* means the process of interpreting and segregating requested electronic funds transfer transactions, or portions of such transactions, to provide for processing of information relating to such requested transactions or portions of such transactions. *"Routing"* means the process of interpreting and transmitting requested electronic funds transfer transactions to a destination selected at the time of interpretation and transmission from two or more alternative destinations.

8. *"Electronic personal identifier"* means a personal and confidential code or other security mechanism which has been designated by a financial institution issuing an access device to a customer to serve as a supplemental means of access to a customer's account that may be used by the customer in conjunction with an access device for the purpose of initiating a transaction by means of a satellite terminal.

9. *"Financial institution"* means and includes any bank incorporated under the provisions of any state or federal law, any savings and loan association incorporated under the provisions of any state or federal law, any credit union organized under the provisions of any state or federal law, any corporation licensed as an industrial loan company under chapter 536A, and any affiliate of a bank, savings and loan association, credit union, or industrial loan company.

10. *"Limited-function terminal"* means an on-line point-of-sale terminal or an off-line point-of-sale terminal which satisfies the requirements of section 527.4, subsection 3, paragraph "d", or a multiple use terminal, which is not operated in a manner to accept an electronic personal identifier. Except as otherwise provided, a limited-function terminal shall not be subject to the requirements imposed upon other satellite terminals pursuant to sections 527.4 and 527.5, subsections 1, 2, 3, 7, and 9.

11. *"Multiple use terminal"* means any machine or device to which all of the following are applicable:

- a. The machine or device is established and owned or operated by a person who primarily engages in a service, business or enterprise, including but not limited to the retail sale of goods or services, but who is not organized under the laws of this state or under federal law as a bank, savings and loan association, or credit union;

- b. The machine or device is used by the person by whom it is owned or operated in some capacity other than as a satellite terminal; and

- c. A financial institution proposes to contract or has contracted to utilize that machine or device as a satellite terminal.

12. *"Municipal corporation"* means an incorporated city.

13. *"Office"* means and includes any business location in this state of a financial institution at which

is offered the services of accepting deposits, originating loans, and dispensing cash, by financial institution personnel in the office.

14. "*Off-line point-of-sale terminal*" means a satellite terminal that satisfies the requirements of section 527.4, subsection 3, paragraph "d" and is other than an on-line point-of-sale terminal.

15. "*On-line point-of-sale terminal*" means a satellite terminal that satisfies the requirements of section 527.4, subsection 3, paragraph "d" and is operated on an on-line real time basis.

16. "*On-line real time basis*" means the delivery or return of a message initiated at a satellite terminal through transmission of electronic impulses to or from a location remote from the location of the satellite terminal prior to completion of the transaction.

17. "*Personal terminal*" means and includes a satellite terminal located in a personal residence and a telephone, wherever located, operated by a customer of a financial institution for the purpose of initiating a transaction affecting a noncommercial account of the customer.

18. "*Premises*" means and includes only those locations where, by applicable law, financial institutions are authorized to maintain a principal place of business and other offices for the conduct of their respective businesses; provided that with respect to an industrial loan company, "*premises*" means only a location where business may be conducted under a single license issued to the industrial loan company.

19. "*Reciprocal basis*" means that a financial institution whose licensed or principal place of business is located in this state has the express authority under the laws of a state other than Iowa to conduct business under qualifications and conditions which are no more restrictive than those imposed by the laws of the other state on financial institutions whose licensed or principal place of business is located in the other state, as determined by the administrator, and the laws of Iowa are no more restrictive of financial institutions whose licensed or principal place of business is located in such other state than they are of financial institutions whose licensed or principal place of business is located in this state.

20. "*Satellite terminal*" means and includes any machine or device located off the premises of a financial institution, and any machine or device located on the premises of a financial institution only if the machine or device is available for use by customers of other financial institutions, whether attended or unattended, by means of which the financial institution and its customers utilizing an access device may engage through either the immediate transmission of electronic impulses to or from the financial institution or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the financial institution, in transactions which affect a customer asset account and which otherwise are specifically permitted by applicable law. However, the term "*satellite terminal*" does not include any such machine or device, wherever located, if that machine or device is not generally

accessible to persons other than employees of a financial institution or an affiliate of a financial institution.

95 Acts, ch 66, §1
Subsection 10 amended

527.3 Enforcement.

1. For purposes of this chapter the superintendent of banking only has the power to issue rules applicable to, to accept and approve or disapprove applications or informational statements from, to conduct hearings and revoke any approvals relating to, and to exercise all other supervisory authority created by this chapter with respect to banks; the superintendent of savings and loan associations only shall have and exercise such powers and authority with respect to savings and loan associations; the superintendent of credit unions only has such powers and authority with respect to credit unions; and the superintendent of banking or the superintendent's designee only has such powers and authority with respect to industrial loan companies.

2. The administrator shall have the authority to examine any person who operates a multiple use terminal, limited-function terminal, or other satellite terminal, and any other device or facility with which such terminal is interconnected, as to any transaction by, with, or involving a financial institution which affects a customer asset account. Information obtained in the course of such an examination shall not be disclosed, except as provided by law.

3. Nothing contained in this chapter shall authorize the administrator to regulate the conduct of business functions or to obtain access to any business records, data, or information of a person who operates a multiple use terminal, except those pertaining to a financial transaction engaged in through a satellite terminal, or as may otherwise be provided by law.

4. Nothing contained in this chapter shall be construed to prohibit or to authorize the administrator to prohibit an operator of a multiple use terminal, other than a financial institution, or an operator of any other device or facility with which such terminal is interconnected, other than a central routing unit or data processing center (as defined in section 527.2) from using those facilities to perform internal proprietary functions, including the extension of credit pursuant to an open end credit arrangement.

5. An administrator may conduct hearings and exercise any other appropriate authority conferred by this chapter regarding the operation or control of a satellite terminal upon the written request of a person, including but not limited to, a retailer, financial institution, or consumer.

6. The authority of an administrator pursuant to section 527.5, subsection 2, paragraph "a", to approve access cards issued by a financial institution for use as an access device includes the requirement that a registration statement shall be filed with the administrator and be maintained on a current basis by each financial institution issuing access cards within the

state. The registration statement shall be in writing on a form prescribed by the administrator, and contain the name and address of the registrant, a depiction of both sides of the access card, and any other information the administrator deems relevant relating to the access card and transactions utilizing the access card which affect a customer asset account.

7. A financial institution shall not be required to join, be a member or shareholder of, or otherwise participate in, any corporation, association, partnership, cooperative, or other enterprise as a condition of the financial institution's utilization of any satellite terminal located within this state.

8. An administrator may issue any order necessary to secure compliance with or prevent a violation of this chapter or the rules adopted pursuant to this chapter, regarding the establishment and operation of a satellite terminal, limited-function terminal, upgraded, altered, modified, or replaced limited-function terminal, and any other device or facility with which such terminal is interconnected. A person who violates a provision of this chapter or any rule or any order issued pursuant to this chapter is subject to a civil penalty not to exceed one thousand dollars for each day the violation continues. A person aggrieved by an order of an administrator may appeal the order by filing a written notice of appeal with the administrator within thirty days of the issuance of the order. The administrator shall schedule a hearing for the purpose of hearing the arguments of the aggrieved person within thirty days of the filing of the notice of appeal. The provisions of chapter 17A shall apply to all matters related to the appeal. The attorney general, on request of the administrator, shall institute any legal proceedings necessary to obtain compliance with an order of the administrator or to prosecute a person for a violation of the provisions of this chapter or rules adopted pursuant to this chapter.

95 Acts, ch 66, §2
NEW subsection 8

527.5 Satellite terminal requirements.

A satellite terminal may be utilized by a financial institution to the extent permitted in this chapter only if the satellite terminal is utilized and maintained in compliance with the provisions of this chapter and only if all of the following are complied with:

1. A satellite terminal in this state may be established by one or more financial institutions. The establishing financial institutions shall designate a single controlling financial institution which shall maintain the location, use, and operation of the satellite terminal, wherever located, in compliance with this chapter. The use and operation of a satellite terminal shall be governed by a written agreement between the controlling financial institution and the person controlling the physical location at which the satellite terminal is placed. The written agreement shall specify all of the terms and conditions, including any fees and charges, under which the satellite terminal is placed at that location. If the satellite terminal

is a multiple use terminal, the written agreement shall specify, and may limit, the specific types of transactions incidental to the conduct of the business of a financial institution which may be engaged in through that terminal.

2. a. A satellite terminal shall be available for use on a nondiscriminatory basis by any other financial institution which has its principal place of business within this state, and by all customers who have been designated by a financial institution using the satellite terminal and who have been provided with an access device, approved by the administrator, by which to engage in electronic transactions by means of the satellite terminal.

b. For the purposes of complying with paragraph "a", an on-line point-of-sale terminal is not required to be available for use by customers of a financial institution by means of an access device by which an off-line point-of-sale terminal can be used to engage in electronic transactions.

c. All off-line point-of-sale terminals located at the retail location or retail locations within this state of a single retailer are exempt from paragraph "a" if electronic transactions can be initiated at each of such terminals only by an access device unique to the retailer.

d. Paragraph "a" applies to a financial institution whose licensed or principal place of business is located in a state other than Iowa if all satellite terminals owned, controlled, operated, or maintained by the financial institution, wherever located, are available on a reciprocal basis to any financial institution whose licensed or principal place of business is located in this state, and to all customers who have been designated by a financial institution using the satellite terminal and who have been provided with an access device.

3. An informational statement shall be filed and shall be maintained on a current basis with the administrator by the financial institution controlling a satellite terminal in this state, which sets forth all of the following:

a. The name and business address of the controlling financial institution.

b. The location of the satellite terminal.

c. A schedule of the charges which will be required to be paid by a financial institution utilizing the satellite terminal.

d. An agreement with the administrator that the financial institution controlling the satellite terminal will maintain that satellite terminal in compliance with this chapter.

The informational statement shall be accompanied by a copy of the written agreement required by subsection 1. The informational statement also shall be accompanied by a statement or copy of any agreement, whether oral or in writing, between the controlling financial institution and a data processing center or a central routing unit, unless operated by or solely on behalf of the controlling financial institution, by which transactions originating at that terminal will be received.

4. A satellite terminal in this state shall not be attended or operated at any time by an employee of a financial institution or an affiliate of a financial institution, except for the purpose of instructing customers, on a temporary basis, in the use of the satellite terminal, for the purpose of testing the terminal, or for the purpose of transacting business on the employee's own behalf.

5. A satellite terminal in this state shall bear a sign or label identifying each type of financial institution utilizing the terminal. A satellite terminal location in this state shall not be used to advertise individual financial institutions or a group of financial institutions. However, a satellite terminal shall bear a sign or label no larger than three inches by two inches identifying the name, address, and telephone number of the owner of the satellite terminal. The administrator may authorize methods of identification that the administrator deems necessary to enable the general public to determine the accessibility of a satellite terminal.

6. The charges required to be paid by any financial institution which utilizes the satellite terminal for transactions involving an access device shall not exceed a pro rata portion of the costs, determined in accordance with generally accepted accounting principles, of establishing, operating and maintaining the satellite terminal, plus a reasonable return on these costs to the owner of the satellite terminal.

7. If the administrator deems the informational statement or any amendment to that statement or amendment to be complete and finds no grounds for denying establishment of a satellite terminal, the administrator may notify the person filing the informational statement that the administrator has expressly approved the establishment and operation of the satellite terminal as described in the informational statement or amendment and according to the agreements attached to the statement or amendment. Operation of the satellite terminal may commence immediately upon a person receiving such express approval from the administrator. If the administrator finds grounds, under any applicable law or rule, for denying establishment of a satellite terminal the administrator shall notify the person filing the informational statement or an amendment thereto, within thirty days of the filing thereof, of the existence of such grounds. If such notification is not given by the administrator, the administrator shall be considered to have expressly approved the establishment and operation of the satellite terminal as described in the informational statement or amendment and according to the agreements attached thereto, and operation of the satellite terminal in accordance therewith may commence on or after the thirtieth day following such filing. However, this subsection shall not be construed to prohibit the administrator from enforcing the provisions of this chapter, nor shall it be construed to constitute a waiver of any prohibition, limitation, or obligation imposed by this chapter.

8. *a.* A satellite terminal in this state shall not be operated in a manner to permit a person to deposit

funds into a demand deposit account, savings account, share account, or any other account representing a liability of a financial institution, if the business location of the financial institution where the original records pertaining to the person's account are maintained is located outside of this state.

b. Paragraph "a" of this subsection does not apply to a corporation licensed under chapter 536A. A satellite terminal shall not be operated in any manner to permit a person to deposit funds into an account representing a liability of a corporation licensed under chapter 536A, if the business location of the corporation where the original records pertaining to the person's account are maintained is located outside of this state.

9. *a.* Satellite terminals located in this state shall be directly connected to either of the following:

(1) A central routing unit approved pursuant to this chapter.

(2) A data processing center which is directly connected to a central routing unit approved pursuant to this chapter.

b. If a data processing center which is directly connected to a satellite terminal located in this state does not authorize or reject a transaction originated at that terminal, the transaction shall be immediately transmitted by the data processing center to a central routing unit approved pursuant to this chapter, unless one of the following applies:

(1) The transaction is not authorized because of a mechanical failure of the data processing center or satellite terminal.

(2) The transaction does not affect a customer asset account held by a financial institution.

c. This subsection does not limit the authority of a data processing center to authorize or reject transactions requested by customers of a financial institution pursuant to an agreement whereby the data processing center authorizes or rejects requested transactions on behalf of the financial institution and provides to the financial institution, on a batch basis and not on an on-line real time basis, information concerning authorized or rejected transactions of customers of the financial institution.

10. A personal terminal may be utilized by a financial institution to the extent permitted by this chapter if the use and operation of the personal terminal is governed by a written agreement between the controlling financial institution and its customer and if the personal terminal is utilized and maintained in compliance with subsection 9 and all other applicable sections of this chapter. A telephone located at other than a personal residence and used primarily as a personal terminal must be utilized and maintained in compliance with this section.

11. Any person, as defined in section 4.1, subsection 20, establishing a limited-function terminal within this state, except for a multiple use terminal, which is utilized to initiate transactions affecting a customer asset account shall file with the administrator and shall maintain on a current basis a registration statement on a form prescribed by the

administrator containing the name and address of the registrant, the location of the limited-function terminal, and any other information the administrator deems relevant. All limited-function terminals established in this state prior to July 1, 1991, shall be registered in a similar manner by the establishing person no later than July 1, 1992.

12. *a.* If at any time, a limited-function terminal at a location as defined in section 527.4, subsection 3, paragraph "d", is replaced by a device constituting either an on-line or an off-line point-of-sale terminal which may be utilized to initiate transactions which affect customer asset accounts through the use of an electronic personal identifier, or is upgraded, altered, or modified to be operated in a manner which allows the use of an electronic personal identifier to initiate transactions which affect customer asset accounts, or an on-line or an off-line point-of-sale terminal which may be utilized to initiate transactions which affect customer asset accounts through the use of an electronic personal identifier is newly established at a location defined in section 527.4, subsection 3, paragraph "d", then such upgraded, altered, or modified limited-function terminal or replacement point-of-sale terminal or such newly established point-of-sale terminal is deemed to be a full-function point-of-sale terminal for purposes of this subsection and all requirements of a satellite terminal in this chapter apply to the full-function point-of-sale terminal with regard to all transactions affecting customer asset accounts which are initiated through the use of an electronic personal identifier, except for section 527.4, subsections 1, 2, and 4, section 527.4, subsection 3, paragraphs "a", "b", and "c", and subsections 1, 3, and 7 of this section.

b. A full-function point-of-sale terminal, as identified in paragraph "a", which is operated in a manner which permits all access devices to be utilized to initiate transactions which affect customer asset accounts, and where all such transactions can be directly routed for authorization purposes as established in this subsection, is also exempt from the provisions of section 527.5, subsection 9. However, if a data processing center directly connected to such full-function point-of-sale terminal does not authorize or reject a transaction affecting a customer asset account initiated at the terminal through the use of an electronic personal identifier, the transaction shall be immediately transmitted by the data processing center to either of the following:

(1) A central routing unit approved pursuant to this chapter.

(2) An electronic funds transfer processing facility maintained or operated by a national card association and utilized for the processing of transactions initiated through the use of electronic funds transfer transaction cards or access devices depicting a service mark, logo, or trademark associated with the national card association. However, if the national card association's processing facility is unable to immediately authorize or reject a transaction affecting a customer asset account initiated at that termi-

nal through the use of an access device which bears a service mark, logo, or trademark associated with a central routing unit approved pursuant to this chapter but does not bear a service mark, logo, or trademark associated with a national card association, or which bears a service mark, logo, or trademark other than that associated with either a central routing unit approved pursuant to this chapter or a national card association, the transaction shall be immediately transmitted to a central routing unit approved pursuant to this chapter, whether the transaction initiated through the use of such access device was transmitted to the national card association's processing facility by a data processing center directly connected to the full-function point-of-sale terminal, or the national card association's processing facility received the transmission of transaction data directly from the full-function point-of-sale terminal.

c. If the national card association's electronic funds transfer processing facility directly or indirectly receives a transaction affecting a customer asset account initiated at a full-function point-of-sale terminal through the use of an electronic personal identifier and an access device bearing a service mark, logo, or trademark associated with a national card association, whether or not the access device also bears the service mark, logo, or trademark of an approved central routing unit, and the national card association's processing facility cannot immediately authorize or reject the transaction, such transaction shall be immediately transmitted to a central routing unit approved pursuant to this chapter, or to a financial institution, or its data processing center, which is capable of immediately authorizing or rejecting the transaction.

d. For purposes of this subsection, a national card association must be a membership corporation or organization, wherever incorporated and maintaining a principal place of business, which is engaged in the business of administering for the benefit of the association's members a program involving electronic funds transfer transaction cards or access devices depicting a service mark, logo, or trademark associated with the national card association and which may be utilized to perform transactions at point-of-sale terminals. A national card association must have a membership solely comprised of insured depository financial institutions, organizations directly or indirectly owned or controlled solely by insured depository financial institutions, entities wholly owned by one or more insured depository financial institutions, holding companies having at least two-thirds of their assets consisting of the voting stock of insured depository financial institutions, organizations wholly owned by one or more holding companies having at least two-thirds of their assets consisting of the voting stock of insured depository financial institutions and which are solely engaged in activities related to the programs sponsored by the national card association, or such other entities or organizations which are authorized by the national card association's bylaws to participate in the electronic

funds transfer transaction card or access device programs or other services and programs sponsored by the national card association. For purposes of this subsection, a national card association shall not include a financial institution, bank holding company as defined in section 524.1801, or in the federal Bank Holding Company Act of 1956, 12 U.S.C. § 1842(d), as amended to July 1, 1994, association holding company as defined in section 534.102, or a supervised organization as defined in section 534.102, any other financial institution holding company organized under federal or state law, or a subsidiary or affiliate corporation owned or controlled by a financial institution or financial institution holding company, which has authorized a customer or member to engage in satellite terminal transactions. For purposes of this subsection, a national card association shall also not include a membership corporation or organization which is conducting business as a regional or nationwide network of shared electronic funds transfer terminals which do not constitute point-of-sale terminals, and is engaged in satellite terminal transaction services utilizing a common service mark, logo, or trademark to identify such terminal services.

e. This subsection does not apply to satellite terminals located in this state, other than on-line and off-line full-function point-of-sale terminals as identified in this subsection, or multiple use terminals located in this state which are capable of being operated in a manner to initiate transactions affecting customer asset accounts through the use of an electronic personal identifier.

13. Effective July 1, 1994, any transaction engaged in with a retailer through a satellite terminal

at a location described in section 527.4, subsection 3, paragraph "d", by means of an access device which results in a debit to a customer asset account shall be cleared and paid at par during the settlement of such transaction. Notwithstanding the terms of any contractual agreement between a retailer or financial institution and a national card association as described in subsection 12, an electronic funds transfer processing facility of a national card association, a central routing unit approved pursuant to this chapter, or a data processing center, the processing fees and charges for such transactions to the retailer shall be as contractually agreed upon between the retailer and the financial institution which establishes, owns, operates, controls, or processes transactions initiated at the satellite terminal. All accounting documents reflecting such fees and charges imposed on the retailer shall separately identify transactions which have resulted in a debit to a customer asset account and the charges imposed. The provisions of this subsection shall apply to all satellite terminals, including limited-function terminals, full-function point-of-sale terminals as identified in subsection 12, paragraph "a", and multiple use terminals.

95 Acts, ch 66, §3, 4
Subsections 12 and 13 amended

527.6 Disclosure of terms. Repealed by 95 Acts, ch 66, § 5.

527.8 Liability and errors. Repealed by 95 Acts, ch 66, § 5.

CHAPTER 533D

DELAYED DEPOSIT SERVICES

533D.1 Title.

This chapter shall be known and may be cited as the "Delayed Deposit Services Licensing Act".

95 Acts, ch 139, §1
NEW section

533D.2 Definitions.

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

1. "Check" means a check, draft, share draft, or other instrument for the payment of money.
2. "Delayed deposit services business" means a person who for a fee does either of the following:
 - a. Accepts a check dated subsequent to the date it was written.
 - b. Accepts a check dated on the date it was written and holds the check for a period of time prior to deposit or presentment pursuant to an agreement with, or any representation made to, the maker of the check, whether express or implied.

3. "Licensee" means a person licensed to operate pursuant to this chapter.

4. "Person" means an individual, group of individuals, partnership, association, corporation, or any other business unit or legal entity.

5. "Superintendent" means the superintendent of banking.

95 Acts, ch 139, §2
NEW section

533D.3 License required — application process — display.

1. A person shall not operate a delayed deposit services business in this state unless the person is licensed by the superintendent as provided in this chapter.

2. An applicant for a license shall submit an application, under oath, to the superintendent on forms prescribed by the superintendent. The forms shall contain such information as the superintendent may prescribe.

3. The application required by this section shall be submitted with both of the following:

a. An application fee in an amount prescribed by rule adopted by the superintendent.

b. A surety bond executed by a surety company authorized to do business in this state in the sum of twenty-five thousand dollars, which bond shall be continuous in nature until canceled by the surety. A surety shall provide at least thirty days' notice in writing to the licensee and to the superintendent indicating the surety's intent to cancel the bond and the effective date of the cancellation. The surety bond shall be for the benefit of the citizens of this state and shall be conditioned upon the licensee's willingness to comply with this chapter, the faithful performance by the licensee of the duties and obligations pertaining to the delayed deposit services business so licensed, and the prompt payment of any judgment recovered against the licensee. The surety's liability under this chapter is limited to the amount of the bond regardless of the number of years the bond is in effect.

4. The superintendent shall issue a license to an applicant if the superintendent finds all of the following:

a. The experience, character, and general fitness of the applicant and its officers, directors, shareholders, partners, or members are such as to warrant a finding that the applicant will conduct the delayed deposit services business honestly, fairly, and efficiently.

b. The applicant and its officers, directors, shareholders, partners, or members have not been convicted of a felony in this state, or convicted of a crime in another jurisdiction which would be a felony in this state.

c. The applicant is financially responsible and will conduct the delayed deposit services business pursuant to this chapter and other applicable laws.

d. The applicant has unencumbered assets of at least twenty-five thousand dollars available for operating the delayed deposit services business.

5. The superintendent shall approve or deny an application for a license by written order not more than ninety days after the filing of an application. An order of the superintendent issued pursuant to this section may be appealed pursuant to chapter 17A.

6. A license issued pursuant to this chapter shall be conspicuously posted at the licensee's place of business. A license shall remain in effect until the next succeeding May 1, unless earlier suspended or revoked by the superintendent. A license shall be renewed annually by filing with the superintendent an application for renewal containing such information as the superintendent may require to indicate any material change in the information contained in the original application or succeeding renewal applications and a renewal fee of one hundred dollars.

95 Acts, ch 139, §3
NEW section

533D.4 Surrender of license.

A licensee may surrender a delayed deposit services license by delivering to the superintendent

written notice that the license is surrendered. The surrender does not affect the licensee's civil or criminal liability for acts committed prior to such surrender, the liability of the surety on the bond, or entitle such licensee to a return of any part of the annual license fee. The superintendent may establish procedures for the disposition of the books, accounts, and records of the licensee and may require such action as deemed necessary for the protection of the makers of checks which are outstanding at the time of surrender of the license.

95 Acts, ch 139, §4
NEW section

533D.5 Change in circumstances — notification of superintendent.

A licensee is to notify the superintendent in writing within thirty days of the occurrence of a material development affecting the licensee, including, but not limited to, any of the following:

1. Filing for bankruptcy or reorganization.
2. Reorganization of the business.

3. Commencement of license revocation or any other civil or criminal proceedings by any other state or jurisdiction.

4. The filing of a criminal indictment or complaint against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents.

5. A felony conviction against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents.

95 Acts, ch 139, §5
NEW section

533D.6 Continued operation after change in ownership — approval of superintendent required.

1. The prior written approval of the superintendent is required for the continued operation of a delayed deposit services business whenever a change in control of a licensee is proposed. Control in the case of a corporation means direct or indirect ownership, or the right to control, ten percent or more of the voting shares of the corporation, or the ability of a person to elect a majority of the directors or otherwise effect a change in policy. Control in the case of any other entity means any change in the principals of the organization, whether active or passive. The superintendent may require information deemed necessary to determine whether a new application is required. Costs incurred by the superintendent in investigating a change of control request shall be paid by the person requesting such approval.

2. A license issued pursuant to this chapter is not transferable or assignable.

95 Acts, ch 139, §6
NEW section

533D.7 Principal place of business — branch offices authorized.

1. Except as provided in subsection 2, a licensee may operate a delayed deposit services business only

at an office designated as its principal place of business in the application. The licensee shall maintain its books, accounts, and records at its designated principal place of business. A licensee may change the location of its designated principal place of business with the prior written approval of the superintendent. The superintendent shall establish forms and procedures for determining whether the change of location should be approved.

2. A licensee may operate branch offices only in the same county in which the licensee's designated principal place of business is located. The licensee may establish a branch office or change the location of a branch office with the prior written approval of the superintendent. The superintendent shall establish forms and procedures for determining whether the location of a branch office should be approved.

3. A fee of one hundred fifty dollars shall be paid to the superintendent for each request made pursuant to subsection 1 or 2.

95 Acts, ch 139, §7
NEW section

533D.8 Other business operations at same site — restrictions.

1. A licensee may operate a delayed deposit services business at a location where any other business is operated or in association or conjunction with any other business with the written approval of the superintendent and consistent with both of the following requirements:

a. The books, accounts, and records of the delayed deposit services business are kept and maintained separate and apart from the books, accounts, and records of the other business.

b. The other business is not of a type which would tend to enable the concealment of acts engaged in to evade the requirements of this chapter. If the superintendent determines upon investigation that the other business is of a type which would conceal such acts the superintendent shall order the licensee to cease the operation of the delayed deposit services business at the location.

2. The department may order the licensee to cease operations of the business if it fails to obtain written approval of the superintendent before operating a business in association or conjunction with services provided under this chapter.

95 Acts, ch 139, §8
NEW section

533D.9 Fee restriction — required disclosure.

1. A licensee shall not charge a fee in excess of fifteen dollars on the first one hundred dollars on the face amount of a check or more than ten dollars on subsequent one hundred dollar increments on the face amount of the check for services provided by the licensee, or pro rata for any portion of one hundred dollars face value.

2. A licensee shall give to the maker of the check, at the time any delayed deposit service transaction is made, or if there are two or more makers, to one of

them, notice written in clear, understandable language disclosing all of the following:

a. The fee to be charged for the transaction.

b. The annual percentage rate on the first hundred dollars on the face amount of the check which the fee represents, and the annual percentage rate on subsequent one hundred dollar increments which the fee represents, if different.

c. The date on which the check will be deposited or presented for negotiation.

d. Any penalty, not to exceed fifteen dollars, which the licensee will charge if the check is not negotiable on the date agreed upon. A penalty to be charged pursuant to this section shall only be collected by the licensee once on a check no matter how long the check remains unpaid. A penalty to be charged pursuant to this section is a licensee's exclusive remedy and if a licensee charges a penalty pursuant to this section no other penalties under this chapter or any other provision apply.

3. In addition to the notice required by subsection 2, every licensee shall conspicuously display a schedule of all fees, charges, and penalties for all services provided by the licensee authorized by this section. The notice shall be posted at the office and every branch office of the licensee.

95 Acts, ch 139, §9
NEW section

533D.10 Prohibited acts by licensee.

1. A licensee shall not do any of the following:

a. Hold from any one maker more than two checks at any one time.

b. Hold from any one maker a check or checks in an aggregate face amount of more than five hundred dollars at any one time.

c. Hold or agree to hold a check for more than thirty-one days.

d. Require the maker to receive payment by a method which causes the maker to pay additional or further fees and charges to the licensee or another person.

e. Repay, refinance, or otherwise consolidate a postdated check transaction with the proceeds of another postdated check transaction made by the same licensee.

f. Receive any other charges or fees in addition to the fees listed in section 533D.9, subsections 1 and 2.

2. For purposes of this section, "licensee" includes a person related to the licensee by common ownership or control, a person in whom the licensee has any financial interest, or any employee or agent of the licensee.

95 Acts, ch 139, §10
NEW section

533D.11 Examination of records by superintendent.

The superintendent shall examine the books, accounts, and records of each licensee annually. The costs of the superintendent incurred in an examination shall be paid by the licensee.

The superintendent may examine or investigate complaints or reports concerning alleged violations of this chapter or any rule adopted or order issued by the superintendent. The superintendent may order the actual cost of the examination or investigation to be paid by the person who is the subject of the examination or investigation, whether or not the alleged violator is licensed.

95 Acts, ch 139, §11
NEW section

533D.12 Suspension or revocation of license.

1. The superintendent may, after notice and hearing pursuant to chapter 17A, suspend or revoke any license issued pursuant to this chapter upon the finding of any of the following:

a. A licensee or any of its officers, directors, shareholders, partners, or members has violated this chapter or any rule adopted or order issued by the superintendent.

b. A licensee has failed to pay a license fee required under this chapter.

c. A fact or condition existing which, if it had existed at the time of the original application for the license, would have resulted in the denial of the superintendent to issue the license.

d. A licensee has abandoned its place of business for a period of sixty days or more.

e. A licensee fails to pay an administrative penalty and the cost of investigation as ordered by the superintendent.

2. Notice of the time and place of the hearing provided for in this section shall be given no less than ten days prior to the date of the hearing.

95 Acts, ch 139, §12
NEW section

533D.13 Cease and desist order — injunction.

If the superintendent believes that any person has engaged in or is about to engage in an act or practice constituting a violation of this chapter or any rule adopted or order issued by the superintendent, the superintendent may issue and serve on the person a cease and desist order. Upon entry of a cease and desist order the superintendent shall promptly notify in writing all persons to whom the order is directed that it has been entered and the reasons for the order. Any person to whom the order is directed may request in writing a hearing within fifteen business days after the date of the issuance of the order. Upon receipt of the written request, the matter shall be set for hearing within fifteen business days of the receipt by the superintendent, unless the person requesting the hearing consents to a later date. If a hearing is not requested within fifteen business days and none is ordered by the superintendent, the order of the superintendent shall automatically become final and remain in effect until modified or vacated by the superintendent. If a hearing is requested or ordered, the superintendent, after notice and hearing, shall issue written findings of fact and conclusions of law and shall affirm, vacate, or modify the order.

The superintendent may vacate or modify an order if the superintendent finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so. Any person aggrieved by a final order of the superintendent may appeal the order as provided in chapter 17A.

If it appears that a person has engaged in or is engaging in an act or practice in violation of this chapter, the attorney general may initiate an action in the district court to enjoin such acts or practices and to enforce compliance with this chapter. Upon a showing of a violation of this chapter, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted or a receiver or conservator may be appointed to oversee the person's assets. The attorney general shall not be required to post a bond.

95 Acts, ch 139, §13
NEW section

533D.14 Administrative penalty.

1. If the superintendent finds, after notice and hearing as provided in this chapter, that a person has violated this chapter, a rule adopted pursuant to this chapter, or an order of the superintendent, the superintendent may order the person to pay an administrative fine of not more than five thousand dollars for each violation, in addition to the costs of investigation.

2. If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection 1, a lien in the amount of the fine and costs may be imposed upon all assets and property of the person in this state and may be recovered in a civil action by the superintendent. Failure of the person to pay the fine and costs constitutes a separate violation of this chapter.

95 Acts, ch 139, §14
NEW section

533D.15 Criminal violation — operation of business without license — injunction.

A person required to be licensed under this chapter who operates a delayed deposit services business in this state without first obtaining a license under this chapter or while such license is suspended or revoked by the superintendent is guilty of a serious misdemeanor. In addition to the criminal penalty provided for in this section, the superintendent may also commence an action to enjoin the operation of the business.

95 Acts, ch 139, §15
NEW section

533D.16 Applicability.

This chapter does not apply to a bank incorporated under the provisions of any state or federal law, a savings and loan association incorporated under the provisions of any state or federal law, a credit union organized under the provisions of any state or federal law, a corporation licensed as an industrial loan company under chapter 536A, or an affiliate of a bank, savings and loan association, credit union, or industrial loan company.

95 Acts, ch 139, §16
NEW section

CHAPTER 535

MONEY AND INTEREST

535.2 Rate of interest.

1. Except as provided in subsection 2 hereof, the rate of interest shall be five cents on the hundred by the year in the following cases, unless the parties shall agree in writing for the payment of interest at a rate not exceeding the rate permitted by subsection 3:

- a. Money due by express contract.
- b. Money after the same becomes due.
- c. Money loaned.
- d. Money received to the use of another and retained beyond a reasonable time, without the owner's consent, express or implied.
- e. Money due on the settlement of accounts from the day the balance is ascertained.
- f. Money due upon open accounts after six months from the date of the last item.
- g. Money due, or to become due, where there is a contract to pay interest, and no rate is stipulated.

2. a. The following persons may agree in writing to pay any rate of interest, and a person so agreeing in writing shall not plead or interpose the claim or defense of usury in any action or proceeding, and the person agreeing to receive the interest is not subject to any penalty or forfeiture for agreeing to receive or for receiving the interest:

(1) A person borrowing money for the purpose of acquiring real property or refinancing a contract for deed.

(2) A person borrowing money or obtaining credit in an amount which exceeds twenty-five thousand dollars, exclusive of interest, for the purpose of constructing improvements on real property, whether or not the real property is owned by the person.

(3) A vendee under a contract for deed to real property.

(4) A domestic or foreign corporation, and a real estate investment trust as defined in section 856 of the Internal Revenue Code, and a person purchasing securities as defined in chapter 502 on credit from a broker or dealer registered or licensed under chapter 502 or under the Securities Exchange Act of 1934, 15 U.S.C., ch. 78A, as amended.

(5) A person borrowing money or obtaining credit for business or agricultural purposes, or a person borrowing money or obtaining credit in an amount which exceeds twenty-five thousand dollars for personal, family, or household purposes. As used in this paragraph, "agricultural purpose" means as defined in section 535.13, and "business purpose" includes but is not limited to a commercial, service, or industrial enterprise carried on for profit and an investment activity.

b. In determining exemptions under this subsection, the rules of construction stated in this paragraph apply:

(1) The purpose for which money is borrowed is the purpose to which a majority of the loan proceeds are applied or are designated in the agreement to be applied.

(2) Loan proceeds used to refinance or pay a prior loan owed by the same borrower are applied for the same purposes and in the same proportion as the original principal of the loan that is refinanced or paid.

(3) If the lender releases the original borrower from all personal liability with respect to the loan, loan proceeds used to pay a prior loan by a different borrower are applied for the new borrower's purposes in agreeing to pay the prior loan.

(4) If the lender releases the original borrower from all personal liability with respect to the loan, the assumption of a loan by a new borrower is treated as if the new borrower had obtained a new loan and had used all of the proceeds to pay the loan assumed.

(5) This paragraph does not modify or limit section 535.8, subsection 2, paragraph "c" or "e".

(6) With respect to any transaction referred to in paragraph "a" of this subsection, this subsection supersedes any interest-rate or finance-charge limitations contained in the Code, including but not limited to this chapter and chapters 321, 322, 524, 533, 534, 536A, and 537.

3. a. The maximum lawful rate of interest which may be provided for in any written agreement for the payment of interest entered into during any calendar month commencing on or after April 13, 1979, shall be two percentage points above the monthly average ten-year constant maturity interest rate of United States government notes and bonds as published by the board of governors of the federal reserve system for the calendar month second preceding the month during which the maximum rate based thereon will be effective, rounded to the nearest one-fourth of one percent per year.

On or before the twentieth day of each month the superintendent of banking shall determine the maximum lawful rate of interest for the following calendar month as prescribed herein, and shall cause this rate to be published, as a notice in the Iowa administrative bulletin or as a legal notice in a newspaper of general circulation published in Polk county, prior to the first day of the following calendar month. This maximum lawful rate of interest shall be effective on the first day of the calendar month following publication. The determination of the maximum lawful rate of interest by the superintendent of banking shall be exempt from the provisions of chapter 17A.

b. Any rate of interest specified in any written agreement providing for the payment of interest shall, if such rate was lawful at the time the agreement was made, remain lawful during the entire

term of the agreement, including any extensions or renewals thereof, for all money due or to become due thereunder including future advances, if any.

c. Any written agreement for the payment of interest made pursuant to a prior written agreement by a lender to lend money in the future, either to the other party to such prior written agreement or a third party beneficiary of such prior agreement, may provide for payment of interest at the lawful rate of interest at the time of the execution of the prior agreement regardless of the time at which the subsequent agreement is executed.

d. Any contract, note or other written agreement providing for the payment of a rate of interest permitted by this subsection which contains any provisions providing for an increase in the rate of interest prescribed therein shall, if such increase could be to a rate which would have been unlawful at the time the agreement was made, also provide for a reduction in the rate of interest prescribed therein, to be determined in the same manner and with the same frequency as any increase so provided for.

4. a. Notwithstanding the provisions of subsection 3, with respect to any agreement which was executed prior to August 3, 1978, and which contained a provision for the adjustment of the rate of interest specified in that agreement, the maximum lawful rate of interest which may be imposed under that agreement shall be nine cents on the hundred by the year, and any excess charge shall be a violation of section 535.4.

b. Notwithstanding the limitation contained in paragraph "a" of this subsection, with respect to a written agreement for the repayment of money loaned, which was executed prior to August 3, 1978 and which provided for the payment of over fifty percent of the initial principal amount of the loan as a single payment due at the end of the term of the agreement, the interest rate may be adjusted after June 3, 1980 according to the terms of the agreement to any rate of interest permitted by the laws of this state as of the date an adjustment in interest is to be made. This paragraph does not authorize adjustment of interest in any manner other than that expressly permitted by the terms of the written agreement, and nothing contained in this paragraph authorizes the collection of additional interest with respect to any portion of a loan which was repaid prior to the effective date of an interest rate adjustment.

c. Notwithstanding paragraph "a", when a written agreement providing for the repayment of money loaned, and requiring the payment of over fifty percent of the initial principal amount of the loan as a single payment due at the end of the term of the agreement is extended, renewed, or otherwise amended by the parties on or after August 3, 1978, the parties may agree to the payment of interest from the effective date of the extension, renewal, or amendment, at a rate and in a manner that is lawful for a new agreement made on that date.

5. This section shall not apply to any loan which is subject to the provisions of section 636.46.

6. a. Notwithstanding the provisions of Acts of the Sixty-eighth General Assembly, chapter 1156, with respect to any agreement which was executed on or after August 3, 1978 and prior to July 1, 1979, and which contained a provision for the adjustment of the rate of interest specified in the agreement, the maximum lawful rate of interest which may be imposed under that agreement shall be that rate which is two and one-half percentage points above the rate initially to be paid under the agreement, provided that the greatest interest rate adjustment which may be made at any one time shall be one-half of one percent and an interest rate adjustment may not be made until at least one year has passed since the last interest rate adjustment, and any excess charge shall be a violation of section 535.4.

b. Notwithstanding the limitation contained in paragraph "a" of this subsection, with respect to a written agreement for the repayment of money loaned which was executed on or after August 3, 1978, and prior to July 1, 1979, and which provided for the payment of over fifty percent of the initial principal amount of the loan as a single payment due at the end of the term of the agreement, the interest rate may be adjusted after June 3, 1980, according to the terms of the agreement to any rate of interest permitted by the laws of this state as of the date an adjustment in interest is to be made. This paragraph does not authorize adjustment of interest in any manner other than that expressly permitted by the terms of the written agreement, and nothing contained in this paragraph authorizes the collection of additional interest with respect to any portion of a loan which was repaid prior to the effective date of an interest rate adjustment.

7. This section does not apply to a charge imposed for late payment of rent. However, in the case of a residential lease, a late payment fee shall not exceed ten dollars a day or forty dollars per month.

95 Acts, ch 125, §1
Subsection 7 amended

535.10 Home equity line of credit.

1. As used in this chapter, the term "home equity line of credit" means an arrangement pursuant to which all of the following are applicable:

a. The amounts borrowed and the interest and other charges are debited to an account.

b. The interest is computed on the account periodically.

c. The borrower has the right to pay in full at any time without penalty or to pay in the installments which are established by the loan agreement.

d. The lender agrees to permit the borrower to borrow money from time to time with the maximum amount of each borrowing established by the loan agreement.

e. The account is secured by an interest in real estate. The priority of the secured interest in the real estate shall be determined by section 654.12A.

2. Except as provided in this section, a home equity line of credit is subject to chapter 537. How-

ever, sections 537.2307, 537.2402, and 537.2510 do not apply.

3. A lender may collect in connection with establishing or renewing a home equity line of credit the costs listed in section 535.8, subsection 2, paragraph "b", charges for insurance as described in section 537.2501, subsection 2, and a loan processing fee as agreed between the borrower and the lender, and annually may collect an account maintenance fee of not more than fifteen dollars. Fees collected under this subsection shall be disregarded for purposes of

determining the maximum charge permitted by subsection 4.

4. The interest rate on a home equity line of credit shall not exceed one and three-quarters percent per month.

5. Real estate which is the consumer's principal dwelling shall not be subject to foreclosure when the balance secured is \$2000 or less.

95 Acts, ch 35, §1
Subsection 1, paragraph d amended

CHAPTER 537

CONSUMER CREDIT CODE

537.1302 Definition — Truth in Lending Act.

As used in this chapter, "*Truth in Lending Act*" means Title 1 of the Consumer Credit Protection Act, in subchapter 1 of 15 U.S.C. chapter 41, as amended to and including January 1, 1995, and includes regulations issued pursuant to that Act prior to January 1, 1995.

95 Acts, ch 31, §1; 95 Acts, ch 209, §27
Section amended

537.2501 Additional charges.

1. In addition to the finance charge permitted by parts 2 and 4, a creditor may contract for and receive the following additional charges:

a. Official fees and taxes.

b. Charges for insurance as described in subsection 2.

c. Amounts actually paid or to be paid by the creditor for registration, certificate of title or license fees.

d. Annual charges, payable in advance, for the privilege of using a credit card which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, under an arrangement pursuant to which the debts resulting from the purchases or leases are payable to the card issuer.

e. With respect to a debt secured by an interest in land, the following "closing costs," provided they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this chapter:

(1) Fees or premiums for title examination, abstract of title, title insurance, or similar purposes including surveys.

(2) Fees for preparation of a deed, settlement statement, or other documents, if not paid to the creditor or a person related to the creditor.

(3) Escrows for future payments of taxes, including assessments for improvements, insurance and water, sewer and land rents.

(4) Fees for notarizing deeds and other documents, if not paid to the creditor or a person related to the creditor.

f. With respect to open-end credit pursuant to a credit card issued by the creditor which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, the parties may contract for an over-limit charge not to exceed ten dollars if the balance of the account exceeds the credit limit established pursuant to the agreement. The over-limit charge under this paragraph shall not be assessed again in a subsequent billing cycle unless in a subsequent billing cycle the account balance has been reduced below the credit limit.

If the differential treatment of this subsection based on the number of persons honoring a credit card is found to be unconstitutional, the parties may contract for the over-limit charge as described in this paragraph in any consumer credit transaction pursuant to open-end credit, and the other conditions relating to the over-limit charge shall remain in effect.

g. A surcharge of not more than five percent of the amount of the face value of the payment instrument or twenty dollars, whichever is greater, for each dishonored payment instrument provided that the fee is clearly and conspicuously disclosed in the cardholder agreement. However, the amount of the surcharge shall not exceed twenty dollars unless the check, draft, or order was presented twice or the maker does not have an account with the drawee. If the check, draft, or order was presented twice or the maker does not have an account with the drawee, the amount of the surcharge shall not exceed fifty dollars. The surcharge shall not be assessed against the maker if the reason for the dishonor of the instrument is that the maker has stopped payment pursuant to section 554.4403.

h. Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are authorized as permissible additional charges by rule adopted by the administrator.

2. An additional charge may be made for insurance written in connection with the transaction, as follows:

a. With respect to insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, if the creditor furnishes a clear, conspicuous and specific statement in writing to the consumer setting forth the cost of the insurance if obtained from or through the creditor and stating that the consumer may choose the person through whom the insurance is to be obtained.

b. With respect to consumer credit insurance providing life, accident, health, or unemployment coverage, if the insurance coverage is not required by the creditor, and this fact is clearly and conspicuously disclosed in writing to the consumer, and if, in order to obtain the insurance in connection with the extension of credit, the consumer gives specific dated and separately signed affirmative written indication of the consumer's desire to do so after written disclosure to the consumer of the cost. However, credit unemployment insurance shall be permitted under this paragraph if all of the following conditions have been met:

(1) The insurance provides coverage beginning with the first day of unemployment. However, the policy may include a waiting period before the consumer may file a claim.

(2) The insurance shall be sold separately and shall be separately priced from any other insurance offered or sold at the same time. The credit unemployment insurance need not be sold separately or separately priced from other insurance offered if it is included as part of a mailed insurance offering by a credit card issuer to its credit cardholders. However, credit unemployment insurance shall not be sold in conjunction with an application for a credit card or for the renewal of a credit card.

(3) The premium rates have been affirmatively approved by the insurance division of the department of commerce. In approving or establishing the rates, the division shall review the insurance company's actuarial data to assure that the rates are fair and reasonable. The insurance commissioner shall either hire or contract with a qualified actuary to review the data. The insurance division shall obtain reimbursement from the insurance company for the cost of the actuarial review prior to approving the rates. In addition, the rates shall be made in accordance with the following provisions:

(a) Rates shall not be excessive, inadequate or unfairly discriminatory.

(b) Due consideration shall be given to all relevant factors within and outside this state but rates shall be deemed to be reasonable under this section and section 537.2501 if they reasonably may be expected to produce a ratio of fifty percent by dividing claims incurred by premiums earned.

3. With respect to open-end credit obtained pursuant to a credit card issued by the creditor which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, the creditor may contract for

and receive any charge lawfully contained in a prior agreement between the consumer and a prior creditor from whom the creditor currently issuing the credit card acquired the credit card account, if the account was acquired in an arm's-length for-value sale from a nonrelated or nonaffiliated creditor. The creditor may charge any charge on new open-end credit accounts lawfully permitted in a prior agreement between a consumer and a prior creditor from whom the creditor currently issuing the credit card acquired the credit card accounts.

95 Acts, ch 137, §1
Subsection 1, paragraph g amended

537.2502 Delinquency charges.

1. With respect to a precomputed consumer credit transaction, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its due date, as originally scheduled or as deferred, in an amount not exceeding the greater of either of the following:

a. Five percent of the unpaid amount of the installment, or a maximum of twenty dollars.

b. The deferral charge that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

2. A delinquency charge under subsection 1, paragraph "a", may be collected only once on an installment however long it remains in default. No delinquency charge may be collected with respect to a deferred installment unless the installment is not paid in full within ten days after its deferred due date. A delinquency charge may be collected at the time it accrues or at any time afterward.

3. No delinquency charge may be collected under subsection 1, paragraph "a", on an installment which is paid in full within ten days after its scheduled or deferred installment due date even though an earlier maturing installment or a delinquency or deferral charge on an earlier installment may not have been paid in full. For purposes of this subsection payments are applied first to current installments and then to delinquent installments.

4. With respect to open-end credit obtained pursuant to a credit card issued by the creditor which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, the parties may contract for a delinquency charge on any payment not paid in full within ten days after its due date, as originally scheduled or as deferred, in an amount not to exceed ten dollars.

5. A delinquency charge under subsection 4 may be collected only once on a payment however long it remains in default. No delinquency charge may be collected with respect to a deferred payment unless the payment is not paid in full within ten days after its deferred due date. A delinquency charge may be collected at the time it accrues or at any time afterward.

6. No delinquency charge may be collected under subsection 4 on a payment which is paid in full within

ten days after its scheduled or deferred due date even though an earlier maturing payment or a delinquency or deferred charge on an earlier payment has not been paid in full. For purposes of this subsection, payments are applied first to amounts due for the current billing cycle and then to delinquent payments.

7. If the differential treatment of subsection 4 based on the number of persons honoring a credit card is found to be unconstitutional, the parties may contract for the delinquency charge as described in subsection 4 in any consumer credit transaction pursuant to open-end credit, and the other conditions provided in this section relating to delinquency charges remain in effect.

8. With respect to open-end credit obtained pursuant to a credit card issued by the creditor which entitles the cardholder to purchase or lease goods or services from less than one hundred persons not related to the card issuer, the parties may contract for a delinquency charge on any payment not paid in full within thirty days after its due date, as originally scheduled or as deferred, in an amount not to exceed ten dollars. A delinquency charge shall not be collected more than once on any one payment, regardless of the length of time the payment remains delinquent.

95 Acts, ch 113, §1
NEW subsection 8

537.7102 Definitions.

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

1. “*Administrator*” means the person designated in section 537.6103.

2. “*Creditor*”, for the purposes of this article, means the person to whom a debtor is obligated, either directly or indirectly, on a debt.

3. “*Debt*” means an actual or alleged obligation arising out of a consumer credit transaction, consumer rental purchase agreement, or a transaction which would have been a consumer credit transaction either if a finance charge was made, if the obligation was not payable in installments, if a lease was for a term of four months or less, or if a lease was of an interest in land. A debt includes a check as defined in section 554.3104 given in a transaction in connection with a consumer rental purchase agreement, in a transaction which was a consumer credit sale or in a transaction which would have been a consumer credit sale if credit was granted and if a finance charge was made, or in a transaction regulated under chapter 533D.

4. “*Debt collection*” means an action, conduct or practice in soliciting debts for collection or in the collection or attempted collection of a debt.

5. “*Debt collector*” means a person engaging, directly or indirectly, in debt collection, whether for the person, the person’s employer, or others, and includes a person who sells, or offers to sell, forms represented to be a collection system, device, or scheme, intended to be used to collect debts.

6. “*Debtor*”, for the purposes of this article, means the person obligated.

95 Acts, ch 139, §17
Subsection 3 amended

CHAPTER 542B

PROFESSIONAL ENGINEERS AND LAND SURVEYORS

542B.1 Registered engineers and surveyors.

A person shall not engage in the practice of engineering or land surveying in the state unless the person is a registered professional engineer or a registered land surveyor as provided in this chapter, except as permitted by section 542B.26.

95 Acts, ch 65, §1
Section amended

542B.2 Terms defined.

1. The “*board*” means the engineering and land surveying examining board provided by this chapter.

2. The term “*engineering documents*” as used in this chapter includes all plans, specifications, drawings, and reports, if the preparation of such documents constitutes or requires the practice of engineering.

3. The term “*engineer intern*” as used in this chapter means a person who passes an examination in the fundamental engineering subjects, but does not entitle the person to claim to be a professional engineer.

4. The term “*in responsible charge*” as used in this chapter means having direct control of and personal supervision over any land surveying work or work involving the practice of engineering. One or more persons, jointly or severally, may be in responsible charge.

5. The practice of “*land surveying*” within the meaning and intent of this chapter includes surveying of areas for their correct determination and description and for conveyancing, or for the establishment or re-establishment of land boundaries and the platting of lands and subdivisions thereof.

6. The term “*land surveying documents*” as used in this chapter includes all plats, maps, surveys, and reports, if the preparation thereof constitutes or requires the practice of land surveying.

7. The term “*land surveyor*” as used in this chapter shall mean a person who engages in the practice of land surveying as hereinafter defined.

8. “*Practice of engineering*” as used in this chapter means any service or creative work, the adequate

performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences, such as consultation, investigation, evaluation, planning, design and design coordination of engineering works and systems, planning the use of land and water, performing engineering surveys and studies, and the review of construction for the purpose of monitoring compliance with drawings and specifications, any of which embraces such services or creative work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property, and including such other professional services as may be necessary to the planning, progress, and completion of the services identified in this paragraph. "Design coordination" includes the review and coordination of technical submissions prepared by others, including as appropriate and without limitation, consulting engineers, architects, landscape architects, land surveyors, and other professionals working under the direction of the engineer. "Engineering surveys" includes all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but excludes the surveying of real property for the establishment of land boundaries, rights-of-way, easements, and the dependent or independent surveys or resurveys of the public land survey system.

A person is construed to be engaged in the practice of engineering if the person does any of the following:

- a. Practices any branch of the profession of engineering.
- b. Makes a representation by verbal claim, sign, advertisement, letterhead, card, or other manner that the person is a professional engineer.
- c. Uses any title which implies that the person is a professional engineer or that the person is certified under this chapter.
- d. The person holds the person's self out as able to perform, or who does perform, any service or work included in the practice of engineering.

9. The term "professional engineer" as used in this chapter means a person, who, by reason of the person's knowledge of mathematics, the physical sciences, and the principles of engineering, acquired by professional education or practical experience, is qualified to engage in the practice of engineering.

95 Acts, ch 65, §2, 3

Former unnumbered paragraphs 1-7 numbered as subsections 1-7 and subsections 2 and 4 amended

Former unnumbered paragraph 8 amended and numbered as subsection 9

Former unnumbered paragraphs 9 and 10 stricken and rewritten and numbered as subsection 8

542B.13 Applications and examination fees.

Applications for registration shall be on forms prescribed and furnished by the board, shall contain

statements made under oath, showing the applicant's education and a detailed summary of the applicant's technical work, and the board shall not require that a recent photograph of the applicant be attached to the application form. An applicant is not ineligible for registration because of age, citizenship, sex, race, religion, marital status or national origin, although the application form may require citizenship information. The board may consider the past felony record of an applicant. The board may require that an applicant submit references. Applications for examination in fundamentals in the practice of engineering and land surveying shall be accompanied by application fees determined by the board. The board shall determine the annual cost of administering the examinations and shall set the fees accordingly.

95 Acts, ch 65, §4
Section amended

542B.14 General requirements for registration — temporary permit to practice engineering.

Each applicant for registration as a professional engineer or land surveyor shall have all of the following requirements, respectively, to wit:

1. As a professional engineer:
 - a. (1) Graduation from a course in engineering of four years or more in a school or college which, in the opinion of the board, will properly prepare the applicant for the examination in fundamental engineering subjects.
 - (2) However, prior to July 1, 1988, in lieu of compliance with subparagraph (1), the board may accept eight years' practical experience which, in the opinion of the board, is of satisfactory character to properly prepare the applicant for the examination in fundamental engineering subjects.
 - (3) Between July 1, 1988 and June 30, 1991, in lieu of compliance with subparagraph (1), the board shall require satisfactory completion of a minimum of two years of postsecondary study in mathematics, physical sciences, engineering technology, or engineering at an institution approved by the board, and may accept six years' practical experience which, in the opinion of the board, is of satisfactory character to properly prepare the applicant for the examination in fundamental engineering subjects.

b. Successfully passing a written, oral, or written and oral examination in fundamental engineering subjects which is designed to show the knowledge of general engineering principles. A person passing the examination in fundamental engineering subjects is entitled to a certificate as an engineer intern.

c. In addition to any other requirement, a specific record of four years or more of practical experience in engineering work which is of a character satisfactory to the board.

d. Successfully passing a written, oral, or written and oral examination designed to determine the proficiency and qualifications to engage in the practice of engineering. No applicant shall be entitled to take

this examination until the applicant shows the necessary practical experience in engineering work.

2. As a land surveyor:

a. (1) Graduation from a course of two years or more in mathematics, physical sciences, mapping and surveying, or engineering in a school or college and six years of practical experience, all of which, in the opinion of the board, will properly prepare the applicant for the examination in fundamental land surveying subjects.

(2) However, prior to July 1, 1988, in lieu of compliance with subparagraph (1), the board may accept eight years' practical experience which, in the opinion of the board, is of satisfactory character to properly prepare the applicant for the examination in fundamental land surveying subjects.

b. Successfully passing a written, oral, or written and oral examination in fundamental land surveying subjects which is designed to show the knowledge of general land surveying principles.

c. In addition to any other requirement, a specific record of four years or more of practical experience in land surveying work which is of a character satisfactory to the board.

d. Successfully passing a written, oral, or written and oral examination designed to determine the proficiency and qualifications to engage in the practice of land surveying. No applicant shall be entitled to take this examination until the applicant shows the necessary practical experience in land surveying work.

The board may establish by rule a temporary permit and a fee to permit an engineer to practice for a period of time without applying for registration.

95 Acts, ch 65, §5

Subsection 1, paragraph d amended

542B.17 Certificate.

The board shall issue a certificate of registration as a professional engineer to an applicant who has passed the examination as a professional engineer and who has paid an additional fee. The certificate shall be signed by the chairperson and secretary of the board under the seal of the board. The certificate shall authorize the applicant to engage in the practice of engineering. The certificate shall not carry with it the right to practice land surveying, unless specifically so stated on the certificate, which permission shall be granted by the board without additional fee in cases where the applicant duly qualifies as a land surveyor as prescribed by the rules of the board.

95 Acts, ch 65, §6

Section amended

542B.21 Suspension, revocation, or reprimand.

The board shall have the power by a five-sevenths vote of the entire board to suspend for a period not exceeding two years, or to revoke the certificate of

registration of, or to reprimand any registrant who is found guilty of the following acts or offenses:

1. Fraud in procuring a certificate of registration.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the registrant's profession or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony under the laws of the United States, of any state or possession of the United States, or of any other country. A copy of the record of conviction or plea of guilty is conclusive evidence.
6. Revocation or suspension of registration to engage in the practice of engineering or land surveying, or other disciplinary action by the licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or other disciplinary action is prima facie evidence of such fact.
7. Fraud in representations as to skill or ability.
8. Use of untruthful or improbable statements in advertisements.
9. Willful or repeated violations of the provisions of this Act.*

95 Acts, ch 65, §7, 8

*See 77 Acts, ch 95, §10

Subsection 5 amended

NEW subsection 6 and former subsections 6-8 renumbered as 7-9

542B.26 Applicability of chapter.

This chapter shall not apply to any full-time employee of any corporation while doing work for that corporation, except in the case of corporations offering their services to the public as professional engineers or land surveyors.

Corporations engaged in designing buildings or works for public or private interests not their own shall be deemed to be engaged in the practice of engineering within the meaning of this chapter. With respect to such corporations all principal designing or constructing engineers shall hold certificates of registration issued under this chapter. This chapter shall not apply to corporations engaged solely in constructing buildings and works.

This chapter shall not apply to any professional engineer or land surveyor working for the United States government, nor to any professional engineer or land surveyor employed as an assistant to a professional engineer or land surveyor registered under this chapter if such assistant is not placed in responsible charge of any work involving the practice of engineering or land surveying work, nor to the operation or maintenance of power and mechanical plants or systems.

95 Acts, ch 65, §9

Section amended

CHAPTER 543B

REAL ESTATE BROKERS AND SALESPERSONS

543B.1 License mandatory.

A person shall not, directly or indirectly, with the intention or upon the promise of receiving any valuable consideration, offer, attempt, agree to perform, or perform any single act as a real estate broker whether as a part of a transaction or as an entire transaction, or represent oneself as a real estate broker, broker associate, or salesperson, without first obtaining a license and otherwise complying with the requirements of this chapter.

95 Acts, ch 170, §1
Section stricken and rewritten

543B.3 Broker — definition.

As used in this chapter, “*real estate broker*” means a person acting for another for a fee, commission, or other compensation or promise, whether it be for all or part of a person’s time, and who engages directly or indirectly in any of the following acts:

1. Sells, exchanges, purchases, rents, or leases real estate.
2. Lists, offers, attempts, or agrees to list real estate for sale, exchange, purchase, rent, or lease.
3. Advertises or holds oneself out as being engaged in the business of selling, exchanging, purchasing, renting, leasing, or managing real estate.
4. Negotiates, or offers, attempts, or agrees to negotiate, the sale, exchange, purchase, rental, or lease of real estate.
5. Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or improvements on real estate.
6. Collects, or offers, attempts, or agrees to collect, rent for the use of real estate.
7. Assists or directs in the procuring of prospects, intended to result in the sale, exchange, purchase, rental, or leasing of real estate.
8. Assists or directs in the negotiation of any transaction intended to result in the sale, exchange, purchase, rental, or leasing of real estate.

95 Acts, ch 170, §2
Section stricken and rewritten

543B.4 Real estate — definition.

As used in this chapter, “*real estate*” means real property wherever situated, and includes any and all leaseholds or any other interest or estate in land, and business opportunities which involve any interest in real property.

95 Acts, ch 170, §3
Section amended

543B.5 Other definitions.

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

1. “*Agency*” means a relationship in which a real estate broker acts for or represents another by the other person’s express authority in a transaction.

2. “*Agency agreement*” means a written agreement between a broker and a client which identifies the party the broker represents in a transaction.

3. “*Appointed agent*” means that affiliated licensee who is appointed by the designated broker of the affiliated licensee’s real estate brokerage agency to act solely for a client of that brokerage agency to the exclusion of other affiliated licensees of that brokerage agency.

4. “*Branch office*” means a real estate broker’s office other than a principal place of business.

5. “*Broker associate*” means a person who has a broker’s license but is licensed under, and employed by or otherwise associated with, another broker as a salesperson.

6. “*Brokerage*” means the business or occupation of a real estate broker.

7. “*Brokerage agreement*” means a contract between a broker and a client which establishes the relationship between the parties as to the brokerage services to be performed.

8. “*Brokerage services*” means those activities identified in sections 543B.3 and 543B.6.

9. “*Client*” means a party to a transaction who has an agency agreement with a broker for brokerage services.

10. “*Customer*” means a consumer who is not being represented by a licensee but for whom the licensee may perform ministerial acts.

11. “*Designated broker*” means a licensee designated by a real estate brokerage agency to act for the agency in conducting real estate brokerage services.

12. “*Inactive license*” means either a broker or salesperson license certificate that is on file with the real estate commission in the commission office and during which time the licensee is precluded from engaging in any of the acts of this chapter.

13. “*Licensee*” means a broker or a salesperson licensed pursuant to this chapter.

14. “*Material adverse fact*” means an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party’s decision to enter into a contract or agreement concerning a transaction, or affects or would affect the party’s decision about the terms of the contract or agreement.

For purposes of this subsection, “*adverse fact*” means a condition or occurrence that is generally recognized by a competent licensee as resulting in any of the following:

- a. Significantly and adversely affecting the value of the property.
- b. Significantly reducing the structural integrity of improvement to real estate.
- c. Presenting a significant health risk to occupants of the property.

15. "Negotiate" means to act as an intermediary between the parties to a transaction, and includes any of the following acts:

a. Participating in the parties' discussion of the terms of a contract or agreement concerning a transaction.

b. Completing, when requested by a party, appropriate forms or other written record to document the party's proposal in a manner consistent with the party's intent.

c. Presenting to a party the proposals of other parties to the transaction and informing the party receiving a proposal of the advantages and disadvantages of the proposal.

16. "Party" means a person seeking to sell, exchange, buy, or rent an interest in real estate, a business, or a business opportunity. "Party" includes a person who seeks to grant or accept an option to buy, sell, or rent an interest in real estate.

17. "Person" means an individual, partnership, association, or corporation.

18. "Regular employee" means a person whose compensation is fixed in advance, who does not receive a commission, who works exclusively for the owner, and whose total compensation is subject to state and federal withholding.

19. "Salesperson" means a person who is licensed under, and employed by or otherwise associated with, a real estate broker, as a selling, renting, or listing agent or representative of the broker.

20. "Transaction" means the sale, exchange, purchase, or rental of, or the granting or acceptance of an option to sell, exchange, purchase, or rent an interest in real estate.

95 Acts, ch 17, §1; 95 Acts, ch 170, §4
See Code editor's note to §13B.8
Section amended and subsections renumbered

543B.7 Acts excluded from provisions.

The provisions of this chapter shall not apply to the sale, exchange, purchase, rental, lease, or advertising of any real estate in any of the following cases:

1. A person who, as owner, spouse of an owner, general partner of a limited partnership, lessor, or prospective purchaser, or through another engaged by such person on a regular full-time basis, buys, sells, manages, or otherwise performs any act with reference to property owned, rented, leased, or to be acquired by such person.

2. By any person acting as attorney in fact under a duly executed and acknowledged power of attorney from the owner, to act on behalf of the owner or lessor to authorize the final consummation and execution of any contract for the sale, leasing, or exchange of real estate.

3. A licensed attorney admitted to practice in Iowa acting solely as an incident to the practice of law.

4. A person acting as a receiver, trustee in bankruptcy, administrator, executor, guardian, or while acting under court order or under authority of a deed of trust, trust agreement, or will.

5. The acts of an auctioneer in conducting a public

sale or auction. The auctioneer's role must be limited to establishing the time, place, and method of an auction, advertising the auction including a brief description of the property for auction and the time and place for the auction, and crying the property at the auction. If the auctioneer closes or attempts to close the sale of the property or otherwise engages in acts defined in sections 543B.3 and 543B.6, then the requirements of this chapter do apply to the auctioneer.

6. An isolated real estate rental transaction by an owner's representative on behalf of the owner; such transaction not being made in the course of repeated and successive transactions of a like character.

7. The sale of time-share uses as defined in section 557A.2.

8. A person acting as a resident manager when such resident manager resides in the dwelling and is engaged in the leasing of real property in connection with their employment.

9. An officer or employee of the federal government, state government, or a political subdivision of the state, in the conduct of the officer's or employee's official duties.

10. A person employed by a public or private utility who performs an act with reference to property owned, leased, or to be acquired by the utility employing that person, where such an act is performed in the regular course of, or incident to, the management of the property and the investment in the property.

95 Acts, ch 170, §5
Section amended

543B.15 Qualifications.

1. Except as provided in section 543B.20 an applicant for a real estate broker's or salesperson's license must be a person whose application has not been rejected for licensure in this or any other state within twelve months prior to the date of application, and whose real estate license has not been revoked in this or any other state within two years prior to date of application.

2. To qualify for a license as a real estate broker or salesperson a person shall be eighteen years of age or over. However, an applicant is not ineligible because of citizenship, sex, race, religion, marital status, or national origin, although the application form may require citizenship information.

3. An applicant for a real estate broker's or salesperson's license who has been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or other similar offense, or of any crime involving moral turpitude in a court of competent jurisdiction in this state, or in any other state, territory, or district of the United States, or in any foreign jurisdiction, may be denied a license by the commission, on the grounds of the conviction. For purposes of this section, "conviction" means a conviction for an indictable offense and includes a guilty plea, deferred judgment from the time of entry of the deferred judgment until the

time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction.

4. An applicant for a real estate broker's or salesperson's license who has had a professional license of any kind revoked in this or any other jurisdiction may be denied a license by the commission on the grounds of the revocation.

5. A person who makes a false statement of material fact on an application for a real estate broker's or salesperson's license, or who causes to be submitted, or has been a party to preparing or submitting any false application for such license, may be denied a license by the commission on the grounds of the false statement or submission. A licensee found to have made such a statement or who caused to be submitted, or was a party to preparing or submitting any false application for a real estate broker's or salesperson's license, may have the license suspended or revoked by the commission on the grounds of the false statement or submission.

6. A licensed real estate broker or salesperson shall notify the commission of the licensee's conviction of an offense included in subsection 3 within sixty days of the conviction. The failure of the licensee to notify the commission of the conviction within sixty days of the date of the conviction is sufficient grounds for revocation of the license.

7. The commission, when considering the denial or revocation of a license pursuant to this section, shall consider the nature of the offense; any aggravating or extenuating circumstances which are documented; the time lapsed since the revocation, conduct, or conviction; the rehabilitation, treatment, or restitution performed by the applicant or licensee; and any other factors the commission deems relevant. Character references may be required but shall not be obtained from licensed real estate brokers or salespersons.

8. To qualify for a license as a real estate broker, a person shall complete at least sixty contact hours of commission approved real estate education within twenty-four months prior to taking the broker examination. This education shall be in addition to the required salesperson prelicense course. The applicant shall have been a licensed real estate salesperson actively engaged in real estate for a period of at least twenty-four months preceding the date of application, or shall have had experience substantially equal to that which a licensed real estate salesperson would ordinarily receive during a period of twenty-four months, whether as a former broker or salesperson, a manager of real estate, or otherwise. However, if the commission finds that an applicant could not acquire employment as a licensed real estate salesperson because of conditions existing in the area where the person resides, the experience requirement of this subsection may be waived for that person by the commission.

9. A qualified applicant for a license as a real estate salesperson shall complete a commission approved short course in real estate education of at

least thirty hours during the twelve months prior to taking the salesperson examination.

95 Acts, ch 64, §1
Section amended

543B.27 Fees.

1. The real estate commission shall set fees for examination and licensing of real estate brokers and real estate salespersons. The commission shall determine the annual cost of administering the examination and shall set the examination fee accordingly. The commission shall set the fees for the real estate broker's licenses and for real estate salesperson's licenses based upon the administrative costs of sustaining the commission. The fees shall include, but shall not be limited to, the costs for:

- a. Per diem, expenses, and travel for commission members.
- b. Office facilities, supplies, and equipment.
- c. Staff assistance.
- d. Establishing and maintaining a real estate education program.

2. Notwithstanding subsection 1, a nonresident person seeking to procure a license pursuant to this chapter shall be charged a fee equal to the greater of the following:

- a. The fee as determined pursuant to subsection 1.
- b. A fee equal to the fee the nonresident person would be charged by such person's state of residence if that person were a resident of this state making application for a license in that state and that state charges a nonresident a fee which is greater than that charged by that state to a resident of that state.

95 Acts, ch 36, §1
Section amended

543B.29 Revocation or suspension.

A license to practice the profession of real estate broker and salesperson may be revoked or suspended when the licensee is guilty of the following acts or offenses:

1. Fraud in procuring a license.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.

5. Conviction of an offense included in section 543B.15, subsection 3. For purposes of this section, "conviction" means a conviction for an indictable offense and includes a guilty plea, deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction. A copy of the record of conviction, guilty plea, deferred judgment, or other finding of guilt is conclusive evidence.

6. Fraud in representations as to skill or ability.

7. Use of untruthful or improbable statements in advertisements.

8. Willful or repeated violations of the provisions of this Act.*

9. Noncompliance with insurance requirements under section 543B.47.

10. Noncompliance with the trust account requirements under section 543B.46.

11. Revocation of any professional license held by the licensee in this or any other jurisdiction.

The revocation of a broker's license shall automatically suspend every license granted to any person by virtue of the person's employment by the broker whose license has been revoked, pending a change of employer and the issuance of a new license. The new license shall be issued upon payment of a fee in an amount determined by the commission based upon the administrative costs involved, if granted during the same license period in which the original license was granted.

A real estate broker or salesperson who is an owner or lessor of property or an employee of an owner or lessor may have the broker's or salesperson's license revoked or suspended for violations of this section or section 543B.34, except subsections 4, 5, 6 and 9, with respect to that property.

95 Acts, ch 64, §2, 3
*See 77 Acts, ch 95, §12
Subsection 5 amended
NEW subsection 11

543B.34 Investigations by commission.

The real estate commission may upon its own motion and shall upon the verified complaint in writing of any person, if the complaint together with evidence, documentary or otherwise, presented in connection with the complaint makes out a prima-facie case, request commission staff or any other duly authorized representative or designee to investigate the actions of any real estate broker, real estate salesperson, or other person who assumes to act in either capacity within this state, and may suspend or revoke a license issued under this chapter at any time if the licensee has by false or fraudulent representation obtained a license, or if the licensee is found to be guilty of any of the following:

1. Making any substantial misrepresentation.
2. Making any false promise of a character likely to influence, persuade or induce.
3. Pursuing a continued and flagrant course of misrepresentation, or making of false promises through agents or salespersons or advertising or otherwise.
4. Acting for more than one party in a transaction without the knowledge of all parties for whom the licensee acts.
5. Accepting a commission or valuable consideration as a real estate broker associate or salesperson for the performance of any of the acts specified in this chapter, from any person, except the broker associate's or salesperson's employer, who must be a licensed real estate broker. However, a broker associate or salesperson may, without violating this

subsection, accept a commission or valuable consideration from a corporation which is wholly owned, or owned with a spouse, by the broker associate or salesperson if the conditions described in subsection 9 are met.

6. Representing or attempting to represent a real estate broker other than the licensee's employer, without the express knowledge and consent of the employer.

7. Failing, within a reasonable time, to account for or to remit any moneys coming into the licensee's possession which belong to others.

8. Being unworthy or incompetent to act as a real estate broker or salesperson in such manner as to safeguard the interests of the public.

9. *a.* Paying a commission or any part of a commission for performing any of the acts specified in this chapter to a person who is not a licensed broker or salesperson under this chapter or who is not engaged in the real estate business in another state or foreign country, provided that the provisions of this section shall not be construed to prohibit the payment of earned commissions to any of the following:

(1) The estate or heirs of a deceased real estate licensee when such licensee had a valid real estate license in effect at the time the commission was earned.

(2) A citizen of another country acting as a referral agent if that country does not license real estate brokers and if the Iowa licensee paying the commission or compensation obtains and maintains reasonable written evidence that the payee is a citizen of the other country, is not a resident of this country, and is in the business of brokering real estate in that other country.

(3) A corporation pursuant to paragraph "b".

b. A broker may pay a commission to a corporation which is wholly owned, or owned with a spouse, by a salesperson or broker associate employed by or otherwise associated with the broker, if all of the following conditions are met:

(1) The corporation does not engage in real estate transactions as a third-party agent or in any other activity requiring a license under this chapter.

(2) The employing broker is not relieved of any obligation to supervise the employed licensee or any other requirement of this chapter or the rules adopted pursuant to this chapter.

(3) The employed broker associate or salesperson is not relieved from any personal civil liability for any licensed activities by interposing the corporate form.

10. Failing, within a reasonable time, to provide information requested by the commission as the result of a formal or informal complaint to the commission which would indicate a violation of this chapter.

11. Any other conduct, whether of the same or different character from that specified in this section, which demonstrates bad faith, or improper, fraudulent, or dishonest dealings which would have disqualified the licensee from securing a license under this chapter.

Any unlawful act or violation of any of the provisions of this chapter by any real estate broker associate or salesperson, employee, or partner or associate of a licensed real estate broker, is not cause for the revocation of the license of any real estate broker, unless the commission finds that the real estate broker had guilty knowledge of the unlawful act or violation.

95 Acts, ch 170, §6
Subsection 9 amended

543B.46 Trust accounts.

1. Each real estate broker shall maintain a common trust account in a bank, a savings and loan association, savings bank, or credit union for the deposit of all down payments, earnest money deposits, or other trust funds received by the broker or the broker's salespersons on behalf of the broker's principal, except that a broker acting as a salesperson shall deposit these funds in the common trust account of the broker for whom the broker acts as salesperson. The account shall be an interest-bearing account. The interest on the account shall be transferred quarterly to the treasurer of state and deposited in the title guaranty fund and used for public purposes and the benefit of the public pursuant to section 16.91 unless there is a written agreement between the buyer and seller to the contrary. The broker shall not benefit from interest received on funds of others in the broker's possession.

2. Each broker shall notify the real estate commission of the name of each bank or savings and loan association in which a trust account is maintained and also the name of the account on forms provided therefor.

3. Each broker shall authorize the real estate commission to examine each trust account and shall obtain the certification of the bank or savings and loan association attesting to each trust account and consenting to the examination and audit of each account by a duly authorized representative of the commission. The certification and consent shall be furnished on forms prescribed by the commission. This does not apply to an individual farm account maintained in the name of the owner or owners for the purpose of conducting ongoing farm business whether it is conducted by the farm owner or by an agent or farm manager when the account is part of a farm management agreement between the owner and agent or manager.

4. Each broker shall only deposit trust funds received on real estate or business opportunity transactions as defined in section 543B.6 in the common trust account and shall not commingle the broker's personal funds or other funds in the trust account with the exception that a broker may deposit and keep a sum not to exceed five hundred dollars in the account from the broker's personal funds, which sum shall be specifically identified and deposited to cover bank service charges relating to the trust account.

5. A broker may maintain more than one trust account provided the commission is advised of said account as specified in subsections 2 and 3 above.

6. The commission shall verify on a test basis, a random sampling of the brokers, corporations, and partnerships for their trust account compliance. The commission may upon reasonable cause, or as a part of or after an investigation, request or order a special report.

7. The examination of a trust account shall be conducted by the commission or the commission's authorized representative.

8. The commission shall adopt rules to ensure implementation of this section.

95 Acts, ch 170, §7
Subsection 4 amended

SUBCHAPTER II

RELATIONSHIP BETWEEN LICENSEES AND PARTIES TO TRANSACTIONS

543B.56 Duties of licensees.

1. *Duties to all parties in a transaction.* In providing brokerage services to all parties to a transaction, a licensee shall do all of the following:

a. Provide brokerage services to all parties to the transaction honestly and in good faith.

b. Diligently exercise reasonable skill and care in providing brokerage services to all parties.

c. Disclose to each party all material adverse facts that the licensee knows except for the following:

(1) Material adverse facts known by the party.

(2) Material adverse facts the party could discover through a reasonably diligent inspection, and which would be discovered by a reasonably prudent person under like or similar circumstances.

(3) Material adverse facts the disclosure of which is prohibited by law.

(4) Material adverse facts that are known to a person who conducts an inspection on behalf of the party.

d. Account for all property coming into the possession of a licensee that belongs to any party within a reasonable time of receiving the property.

2. *Duties to a client.* In addition to the licensee's duties under subsection 1, a licensee providing brokerage services to a client shall do all of the following:

a. Place the client's interests ahead of the interests of any other party, unless loyalty to a client violates the licensee's duties under subsection 1, section 543B.58, or under other applicable law.

b. Disclose to the client all information known by the licensee that is material to the transaction and that is not known by the client or could not be discovered by the client through a reasonably diligent inspection.

c. Fulfill any obligation that is within the scope of the agency agreement, except those obligations that are inconsistent with other duties that the licensee has under this chapter or any other law.

d. Disclose to a client any financial interests the licensee or the brokerage has in any business entity to which the licensee or brokerage refers a client for any service or product related to the transaction.

3. *Prohibited conduct.* In providing brokerage services, a licensee shall not do either of the following:

a. Accept a fee or compensation related to a transaction from a person other than the licensee's client, unless the licensee has provided written notice to all parties to the transaction that a fee or compensation will be accepted by the licensee from such person.

b. Act in a transaction on the licensee's own behalf, on behalf of the licensee's immediate family or brokerage, or on behalf of an organization or business entity in which the licensee has an interest, unless the licensee has the written consent of all parties to the transaction.

95 Acts, ch 17, §2
NEW section

543B.57 Confirmation and disclosure of relationship.

1. A licensee shall not represent any party or parties to a transaction or otherwise as a licensee unless that licensee makes an affirmative written disclosure to all parties to the transaction identifying which party that person represents in the transaction. The disclosure shall be acknowledged by separate signatures of all parties to the transaction.

2. a. The disclosure required in subsection 1 shall be made by the licensee at the time the licensee provides specific assistance to the client, or prior to any offer being made or accepted by any party to a transaction, whichever is sooner. A change in a licensee's representation that makes the initial disclosure incomplete, misleading, or inaccurate requires that a new disclosure be made immediately.

b. For purposes of this section, "specific assistance" means eliciting or accepting confidential information about a party's real estate needs, motivation, or financial qualifications. "Specific assistance" does not mean an open house showing, preliminary conversations concerning price range, location, and property styles, or responding to general factual questions concerning properties which have been advertised for sale or lease.

3. The written agency disclosure form shall contain all of the following:

a. A statement of which party is the licensee's client or, if the licensee is providing brokerage services to more than one client as provided under section 543B.60, a statement of all persons who are the licensee's clients.

b. A statement of the licensee's duties to the licensee's client under section 543B.56, subsections 1 and 2.

c. Any additional information that the licensee determines is necessary to clarify the licensee's relationship to the licensee's client or customer.

4. This section does not prohibit a person from representing oneself.

5. The seller, in the listing agreement, may authorize the seller's licensee to disburse part of the licensee's compensation to other licensees, including a buyer's licensee solely representing the buyer. A

licensee representing a buyer shall inform the listing licensee, if there is a listing licensee, either verbally or in writing, of the agency relationship before any negotiations are initiated. The obligation of either the seller or the buyer to pay compensation to a licensee is not determinative of the agency relationship.

95 Acts, ch 17, §3
NEW section

543B.58 Licensees representing more than one client in a transaction.

1. A licensee shall not be the agent for both a buyer and a seller to a transaction without obtaining the written consent of both the buyer and the seller. The written consent shall state that the licensee has made a full disclosure of the type of representation the licensee will provide. The consent to multiple representation shall contain a statement of the licensee's duties under section 543B.56, subsection 1, a statement of the licensee's duties to the client under section 543B.56, subsection 2, paragraphs "b" and "c", and a statement that the clients understand the licensee's duties and consent to the licensee's providing brokerage services to more than one client.

2. A consent to multiple representation may contain additional disclosures by the licensee or additional agreements between the licensee and the clients that do not violate any duty of a licensee under this chapter.

95 Acts, ch 17, §4
NEW section

543B.59 Appointed agents within a firm.

1. *Appointed agents.* A real estate brokerage agency entering into a brokerage agreement, through a designated broker, may notify a client in writing of those affiliated licensees within the real estate brokerage agency who will be acting as appointed agents of that client to the exclusion of all other affiliated licensees within the real estate brokerage agency.

2. *Dual agent.* A real estate brokerage agency and a designated broker are not considered to be dual agents solely because of an appointment under the provisions of this section. However, an affiliated licensee who personally represents both the seller and the buyer in a particular transaction is considered to be a disclosed dual agent and is required to comply with the provisions of this subchapter governing disclosed dual agents.

3. *Actual knowledge — information.* A client, a real estate brokerage agency, and its appointed agents are deemed to possess only actual knowledge and information at the time the appointed agents are appointed. Knowledge or information is not imparted by operation of law among the clients, the real estate brokerage agency, and its appointed agents.

4. *Appointments — roles.* The commission shall define by rule the methods of appointment and the role of the real estate brokerage agency and the designated broker. The rules must include a requirement that clients be informed as to the real estate

brokerage agency's appointed agent policy and be given written notice of that policy in advance of entering into a brokerage agreement.

95 Acts, ch 17, §5
NEW section

543B.60 Licensees providing services in more than one transaction.

A licensee may provide brokerage services simultaneously to more than one party in different transactions unless the licensee agrees with a client that the licensee is to provide brokerage services only to that client. If the licensee and a client agree that the licensee is to provide brokerage services only to that client, the agency agreement disclosure required under section 543B.57, subsection 1, shall contain a statement of that agreement.

95 Acts, ch 17, §6
NEW section

543B.61 Violations — real estate commission jurisdiction.

1. Failure of a licensee to comply with sections 543B.57 through 543B.60 is prima facie evidence of a violation under section 543B.34, subsection 4.

2. Failure of a licensee to act in accordance with the disclosures made pursuant to sections 543B.56 through 543B.58 is prima facie evidence of a violation under section 543B.34, subsection 4.

3. Nothing in this subchapter shall affect the validity of title to real property transferred based solely on the reason that a licensee failed to conform to the provisions of this subchapter.

95 Acts, ch 17, §7
NEW section

543B.62 Changes in common law duties and liabilities of licensees and parties.

1. Except as provided in subsection 2, the duties of a licensee specified in this chapter or in rules adopted pursuant to this chapter supersede any fiduciary duties of a licensee to a party to a transaction based on common law principles of agency to the extent that those common law fiduciary duties are inconsistent with the duties specified in this chapter or rules adopted pursuant to this chapter.

2. This section shall not be construed to modify a licensee's duty under common law as to negligent or

fraudulent misrepresentation of material information.

3. *a.* A licensee who is providing brokerage services to a client and who retains another licensee to provide brokerage services to that client is not liable for misrepresentation made by the other licensee, unless the retaining licensee knew or should have known of the other licensee's misrepresentation or the other licensee is repeating a misrepresentation made to the other licensee by the retaining licensee.

b. A broker is responsible for supervising a salesperson or broker associate employed by or otherwise associated with the broker as a representative of the broker. The existence of an independent contractor relationship or any other special compensation arrangement between the broker and the salesperson or broker associate does not relieve the broker, salesperson, or broker associate of the duties and responsibilities established by this chapter. A salesperson or broker associate shall keep the employing broker fully informed of all activities being conducted on behalf of the broker and any other activities that might impact on the broker's responsibilities. However, the failure of the salesperson or broker associate to keep the employing broker fully informed does not relieve the broker of the duties and responsibilities established by this chapter.

95 Acts, ch 17, §8
NEW section

543B.63 Licensee not considered subagent.

A licensee is not considered to be a subagent of a client of another licensee solely by reason of membership or other affiliation by the licensee in a multiple listing service or other similar information source, and an offer of subagency shall not be made through a multiple listing service or other similar information source.

95 Acts, ch 17, §9
NEW section

543B.64 Chapter is not limiting.

The duties imposed upon persons under this chapter or pursuant to rules adopted by the real estate commission shall not limit or abridge any duty or responsibility to disclose created by other applicable law, or under a contract between parties.

95 Acts, ch 17, §10
NEW section

CHAPTER 546

DEPARTMENT OF COMMERCE

546.7 Utilities division.

The utilities division shall regulate and supervise public utilities operating in the state. The division shall enforce and implement chapters 476, 476A, 477C, 478, 479, 479A, and 479B and shall perform other duties assigned to it by law. The division is

headed by the administrator of public utilities who shall be appointed by the governor pursuant to section 474.1.

95 Acts, ch 192, §60
Section amended

CHAPTER 548

REGISTRATION AND PROTECTION OF MARKS

548.101 Definitions.

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

1. *“Abandoned”* means the occurrence of any of the following in relation to a mark:

a. The use of the mark has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall constitute prima facie evidence of abandonment.

b. A course of conduct of the owner of the mark, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

2. *“Applicant”* means a person filing an application for registration of a mark under this chapter, and the person’s legal representative, successor, or assignee.

3. *“Dilution”* means the lessening of the capacity of a mark to identify and distinguish goods or services, regardless of the presence or absence of any of the following:

a. Competition between parties.

b. Likelihood of confusion, mistake, or deception.

4. *“Mark”* means a trademark or service mark, entitled to registration under this chapter, whether registered or not.

5. *“Person”* and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under this chapter includes a juristic person as well as a natural person. The term *“juristic person”* includes a firm, partnership, corporation, union, association, or other organization capable of suing and being sued in a court of law.

6. *“Registrant”* means a person to whom the registration of a mark under this chapter is issued, and the legal representative, successor, or assignee of such person.

7. *“Secretary”* means the secretary of state or the designee of the secretary charged with the administration of this chapter.

8. *“Service mark”* means a word, name, symbol, or device or any combination of a word, name, symbol, or device, used by a person to identify services and to distinguish the services of that person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of a sponsor.

9. *“Trademark”* means a word, name, symbol, or device or any combination of a word, name, symbol, or device, used by a person to identify and distinguish the goods of that person, including a unique product, from those manufactured and sold by others, and to

indicate the source of the goods, even if that source is unknown.

10. *“Trade name”* means a name used by a person to identify a business or vocation of such person.

11. *“Use”* means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For the purposes of this chapter, a mark shall be deemed to be in use under any of the following circumstances:

a. On goods sold or transported in commerce in this state when the mark is placed in any manner on the goods or containers or associated displays, or on affixed tags or labels, or if the nature of the goods makes the placement on the goods or containers impracticable, on documents associated with the goods or their sale.

b. On services when the mark is used or displayed in the sale or advertising of services and the services are rendered in this state.

95 Acts, ch 49, §15; 95 Acts, ch 67, §38, 39
Subsection 1, paragraph a amended
Subsection 9 amended
Subsection 11, paragraph a amended

548.102 Registrability.

A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if the mark meets any of the following criteria:

1. Consists of or comprises immoral, deceptive, or scandalous matter.

2. Consists of or comprises matter which may disparage, bring into contempt or disrepute, or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute.

3. Consists of or comprises the flag, or coat of arms, or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof.

4. Consists of, or comprises the name, signature, or portrait identifying a particular living individual, except by the individual’s written consent.

5. Consists of a mark which is one of the following:

a. When used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of the goods or services.

b. When used on or in connection with the goods or services of the applicant, is primarily geographically descriptive or geographically misdescriptive of the goods or services.

c. Is primarily merely a surname.

This subsection 5 does not prevent the registration of a mark used by the applicant which has become distinctive of the applicant’s goods or services. The secretary may accept as evidence that the mark has become distinctive as used on or in connection with

the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state for the five years before the date on which the claim for distinctiveness is made.

6. Consists of or comprises a mark which so resembles a mark registered in this state or a mark or

trade name previously used by another and not abandoned, so as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake, or to deceive.

95 Acts, ch 67, §40

Subsection 5, unnumbered paragraph 2 amended

CHAPTER 554

UNIFORM COMMERCIAL CODE

554.3102 Subject matter.

1. This Article applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 12, or to securities governed by Article 8.

2. If there is conflict between this Article and Article 4 or 9, Articles 4 and 9 govern.

3. Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

95 Acts, ch 67, §41

Effective July 1, 1995; 94 Acts, ch 1167, §122; former section repealed effective July 1, 1995; 94 Acts, ch 1167, §121, 122; for law prior to July 1, 1995, see Code 1993; see also §554.3103-554.3105

Subsections 1 and 2 amended

554.3512 Holder's recourse for dishonor.

1. The holder of a dishonored check, draft, or order may assess against the maker of that check, draft, or order a surcharge of not more than the greater of twenty dollars or five percent of the face value of the check. However, the amount of the surcharge shall not exceed twenty dollars unless the check, draft, or order was presented twice or the maker does not have an account with the drawee. If the check, draft, or order was presented twice or the maker does not have an account with the drawee, the amount of the surcharge shall not exceed fifty dollars.

2. The surcharge authorized by this section shall not be assessed unless the holder clearly and conspicuously posts a notice at the usual place of payment, or in the billing statement of the holder, stating that a surcharge will be assessed and the amount of the surcharge. However, the surcharge shall not be assessed against the maker if the reason for the dishonor of the check, draft, or order is that the maker has stopped payment pursuant to section 554.4403.

95 Acts, ch 137, §2

NEW section

554.3513 Civil remedy for dishonor.

1. In a civil action against a person who makes a check, draft, or order, which has been dishonored for lack of funds or credit, after having been presented twice, or because the maker has no account with the drawee, the plaintiff shall recover from the defendant total damages equaling three times the face value of the dishonored check, draft, or order, which sum shall

include the face value of the check, draft, or order. However, total recovery under this section shall not exceed by more than five hundred dollars the amount of the check, draft, or order and may be awarded only if all of the following apply:

a. The plaintiff made written demand of the defendant for payment of the amount of the check, draft, or order not less than thirty days before commencing the action.

b. The written demand notified the defendant that treble damages would be sought if the face value of the dishonored check was not paid within thirty days of receipt, and was received by the defendant through personal service or restricted certified mail.

c. The defendant has failed to tender to the plaintiff, prior to commencement of the action, an amount of money not less than the face value of the dishonored check, draft, or order.

d. The plaintiff clearly and conspicuously posted a notice at the usual place of payment, or in a billing statement of the plaintiff, stating that civil damages pursuant to this section would be sought upon dishonorment.

2. In an action for damages pursuant to subsection 1, if the court or jury determines that the failure of the defendant to satisfy the dishonored check, draft, or order is due to economic hardship, the court or jury may waive all or part of the allowable civil damages. However, if the court or jury waives all or part of the civil damages, the court or jury shall render judgment against the defendant in the amount of the dishonored check, draft, or order and the actual costs incurred by the plaintiff in bringing the action.

3. This section does not apply if the reason for the dishonor of the check, draft, or order is that the maker has stopped payment pursuant to section 554.4403 because of a bona fide dispute between the maker and the holder relating to the consideration for which the check, draft, or order was given.

4. In actions brought pursuant to this section, no additional award pursuant to section 554.3512 or 625.22 shall be made.

5. The plaintiff in a civil action to collect a dishonored check, draft, or order brought before the district court sitting in small claims shall not request or recover punitive or exemplary damages, but may seek the civil damages allowed under this section. The plaintiff in a civil action to collect a dishonored

check, draft, or order in the district court not sitting in small claims, may seek punitive or exemplary damages if appropriate under chapter 668A, or civil damages allowed under this section, but not both.

6. A violation of this section is an unlawful practice as provided in section 714.16, subsection 2, paragraph "a".

95 Acts, ch 137, §3
NEW section

554.4104 Definitions and index of definitions.

1. In this Article, unless the context otherwise requires:

a. "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit.

b. "Afternoon" means the period of a day between noon and midnight.

c. "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions but for the purposes of determining a bank's midnight deadline, shall not include Saturday, Sunday, or any holiday when the federal reserve banks are not performing check clearing functions.

d. "Clearing house" means an association of banks or other payors regularly clearing items.

e. "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank.

f. "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (section 554.8102) or instructions for uncertificated securities (section 554.8308), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.

g. "Draft" means a draft as defined in section 554.3104 or an item, other than an instrument, that is an order.

h. "Drawee" means a person ordered in a draft to make payment.

i. "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 12 or a credit or debit card slip.

j. "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.

k. "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final.

l. "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

2. Other definitions applying to this Article and the sections in which they appear are:

"Agreement for electronic presentment"	Section 554.4110
"Bank"	Section 554.4105
"Collecting bank"	Section 554.4105
"Depository bank"	Section 554.4105
"Intermediary bank"	Section 554.4105
"Payor bank"	Section 554.4105
"Presenting bank"	Section 554.4105
"Presentment notice"	Section 554.4110

3. The following definitions in other Articles apply to this Article:

"Acceptance"	Section 554.3409
"Alteration"	Section 554.3407
"Cashier's check"	Section 554.3104
"Certificate of deposit"	Section 554.3104
"Certified check"	Section 554.3409
"Check"	Section 554.3104
"Good faith"	Section 554.3103
"Holder in due course"	Section 554.3302
"Instrument"	Section 554.3104
"Notice of dishonor"	Section 554.3503
"Order"	Section 554.3103
"Ordinary care"	Section 554.3103
"Person entitled to enforce"	Section 554.3301
"Presentment"	Section 554.3501
"Promise"	Section 554.3103
"Prove"	Section 554.3103
"Teller's check"	Section 554.3104
"Unauthorized signature"	Section 554.3403

4. In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

95 Acts, ch 67, §42
1994 amendments take effect July 1, 1995; 94 Acts, ch 1167, §122; for law prior to July 1, 1995, see Code 1993
Subsection 3 amended

554.4109 Delays.

1. Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this chapter for a period not exceeding two additional banking days without discharge of drawers or endorsers or liability to its transferor or a prior party.

2. Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this chapter or by instructions is excused if (i) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank, and (ii) the bank exercises such diligence as the circumstances require.

95 Acts, ch 49, §16
1994 amendments take effect July 1, 1995; 94 Acts, ch 1167, §122; for law prior to July 1, 1995, see §554.4108, Code 1993
Section transferred from §554.4108 pursuant to directive in 94 Acts, ch 1167, §120
Former §554.4109 repealed effective July 1, 1995, by 94 Acts, ch 1167, §121, 122; for law prior to July 1, 1995, see Code 1993
Subsection 2 amended

554.4212 Presentment by notice of item not payable by, through, or at a bank; liability of drawer or endorser.

1. Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under section 554.3501 by the close of the bank's next banking day after it knows of the requirement.

2. If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under section 554.3501 is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or endorser by sending it notice of the facts.

95 Acts, ch 67, §43
1994 amendments take effect July 1, 1995; 94 Acts, ch 1167, §122; for law prior to July 1, 1995, see §554.4210, Code 1993

Section transferred from §554.4210 and former §554.4212 transferred to §554.4214 pursuant to directive in 94 Acts, ch 1167, §120
Subsection 2 amended

554.4215 Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal.

1. An item is finally paid by a payor bank when the bank has first done any of the following:

- a. paid the item in cash;
- b. settled for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; or
- c. made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule, or agreement.

2. If provisional settlement for an item does not become final, the item is not finally paid.

3. If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

4. If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

5. Subject to (i) applicable law stating a time for availability of funds and (ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

a. if the bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time;

b. if the bank is both the depositary bank and the payor bank, and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

6. Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

95 Acts, ch 49, §17; 95 Acts, ch 67, §44
1994 amendments take effect July 1, 1995; 94 Acts, ch 1167, §122; for law prior to July 1, 1995, see §554.4213, Code 1993

Section transferred from §554.4213 pursuant to directive in 94 Acts, ch 1167, §120
NEW subsection 2
Subsection 6 amended

554.4401 When bank may charge customer's account.

1. A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

2. A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

3. A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in section 554.4403, subsection 2, for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in section 554.4303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under section 554.4402.

4. A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

- a. the original terms of the customer's altered item; or
- b. the terms of the customer's completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

95 Acts, ch 67, §45
1994 amendments take effect July 1, 1995; 94 Acts, ch 1167, §122; for law prior to July 1, 1995, see Code 1993
Subsection 1 amended

554.9401 Place of filing—erroneous filing—removal of collateral.

1. The proper place to file in order to perfect a security interest is as follows:

a. when the collateral is timber to be cut or is minerals or the like (including oil and gas), or accounts subject to section 554.9103, subsection 5, or when the financing statement is filed as a fixture filing (section 554.9313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;

b. when the collateral is consumer goods and when the debtor resides in this state, then in the office of the recorder in the county of the debtor's residence;

c. in all other cases, in the office of the secretary of state.

2. A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this Article and is also effective with regard to collateral covered by the financing state-

ment against any person who has knowledge of the contents of such financing statement.

3. A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

4. The rules stated in section 554.9103 determine whether filing is necessary in this state.

5. Notwithstanding the preceding subsections, and subject to section 554.9302, subsection 3, the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the secretary of state. This filing constitutes a fixture filing (section 554.9313) as to the collateral described therein which is or is to become fixtures.

6. Of each fee collected by the county recorder under sections 570A.4, 554.9403, 554.9405, and 554.9406, the county recorder shall remit five dollars, if filed on a standard form or six dollars otherwise, to the department of revenue and finance for deposit in the general fund of the state.

95 Acts, ch 219, §43
Subsection 6 amended

CHAPTER 554A

LIVESTOCK WARRANTY EXEMPTION

554A.1 Livestock sales—when exempt from implied warranty.

1. Notwithstanding section 554.2316, subsection 2, all implied warranties arising under sections 554.2314 and 554.2315 are excluded from a sale of cattle, hogs, sheep, ostriches, rheas, emus, and horses if the following information is disclosed to the prospective buyer or the buyer's agent in advance of the sale, and if confirmed in writing at or before the time of acceptance of the livestock when confirmation is requested by the buyer or the buyer's agent:

a. That the animals to be sold have been inspected in accordance with existing federal and state animal health regulations and found apparently free from any infectious, contagious, or communicable disease.

b. One of the following, as applicable:

(1) Except when the livestock have been confined with livestock from another source or assembled within the meaning of subparagraph 2, the name and address of the present owner, and whether or not that owner has owned all of the livestock for at least thirty days.

(2) If the livestock have been confined with livestock from another source or assembled from two or more sources within the previous thirty days, the livestock shall be represented as being "assembled

livestock". As used in this subparagraph, "confined with livestock from another source" means the placement of livestock in a livestock auction market, yard, or other unitary facility in which livestock from another source are confined, but does not include livestock confined at the facility where the sale takes place if such confinement is for less than forty-eight hours prior to the day of sale; provided that livestock which are not sold after being confined with livestock from another source at a facility and offered for sale shall be deemed "assembled livestock" for the thirty-day period following the day when offered for sale.

2. If the livestock are represented as being "assembled livestock", the name and address of the present owner shall be disclosed.

3. In the case of an auction sale, the disclosure required by this section shall be made verbally immediately before the sale by the owner, an agent for the owner, or the person who is conducting the auction of the lot of livestock in question. Warranties shall be implied to the person who is conducting the auction only if the disclosure contains representations which that person knew or had reason to know were untrue.

95 Acts, ch 43, §12
Subsection 1, unnumbered paragraph 1 amended

CHAPTER 555C

VALUELESS MOBILE, MODULAR, AND MANUFACTURED HOMES

555C.1 Definitions.

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

1. "Home" means a mobile home, modular home, or a manufactured home as defined in section 435.1.

2. "Mobile home park" means a mobile home park as defined in section 435.1.

3. "Personal property" includes personal property of the owner or other occupant of the home, which is located in the home, on the lot where the home is located, in the immediate vicinity of the home or lot, or in any storage area provided by the real property owner for use of the home owner or occupant.

4. "Valueless home" means a home located in a mobile home park including all other personal property, where all of the following conditions exist:

a. The home has been abandoned as defined in section 562B.27, subsection 1, and the home has not been removed after the right to possession of the underlying real estate has been terminated pursuant to chapter 648.

b. A lien of record, other than a tax lien as provided in chapter 435, does not exist against the home. A lien exists only if the real property owner receives notice of a lien on the standardized registration form completed by an owner or occupant pursuant to chapter 562B, or a lien has been filed in the state or county records on a date before the home is considered to be valueless.

c. The value of the home and other personal property is equal to or less than the reasonable cost of disposal plus all sums owing to the real property owner pertaining to the home.

95 Acts, ch 104, §1
NEW section

555C.2 Removal of valueless home — presumption of value.

1. An owner of a mobile home park may remove, or cause to be removed, from the mobile home park a valueless home and personal property associated with the home at any time following a determination of abandonment in accordance with section 562B.27, subsection 1, and an order of removal pursuant to chapter 648 without further notice to the owner or occupant of the valueless home. Within ten days of the removal, the mobile home park owner shall give written notice to the county treasurer for the county in which the mobile home park is located by affidavit which shall include a description of the valueless home, its owner or occupant, if known, the date of removal, and if applicable, the name and address of any third party to whom a new title shall be issued.

2. A valueless home and any personal property associated with the valueless home shall be conclusively deemed in value to be equal to or less than the

reasonable cost of disposal plus all sums owing to the mobile home park owner pertaining to the valueless home, if the mobile home park owner or an agent of the owner removes the home and personal property to a demolisher, sanitary landfill, or other lawful disposal site or if the mobile home park owner allows a disinterested third party to remove the valueless home and personal property in a transaction in which the mobile home park owner receives no consideration.

95 Acts, ch 104, §2
NEW section

555C.3 New title — third party.

If a new title is to be issued to a third party who is removing a valueless home, the county treasurer shall issue, upon receipt of the affidavit required in section 555C.2, a new title upon payment of a fee equal to the fee specified in section 321.42 for replacement certificates of title for vehicles. Any tax lien levied pursuant to chapter 435 is canceled and the ownership interest of the previous owner or occupant of the valueless home is terminated as of the date of issuance of the new title. The new title owner shall take the title free of all rights and interests even though the mobile home park owner fails to comply with the requirements of this chapter or any judicial proceedings, if the new title owner acts in good faith.

95 Acts, ch 104, §3
NEW section

555C.4 Removal by mobile home park owner.

Unless the valueless home is to be titled in the name of a third party, the mobile home park owner may dispose of a valueless home and any personal property to a demolisher, sanitary landfill, or other lawful disposal site under the terms and conditions as the mobile home park owner shall determine.

95 Acts, ch 104, §4
NEW section

555C.5 Liability limited.

A person who removes or allows the removal of a valueless home as provided in this chapter is not liable to the previous owner of the valueless home due to the removal of the valueless home.

95 Acts, ch 104, §5
NEW section

555C.6 Rights of real property owner.

The rights provided in this chapter to a real property owner are not exclusive of other rights of the real property owner.

95 Acts, ch 104, §6
NEW section

CHAPTER 556

DISPOSITION OF UNCLAIMED PROPERTY

556.1 Definitions and use of terms.

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

1. "*Banking organization*" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or a private banker engaged in business in this state.

2. "*Business association*" means any corporation other than a public corporation, joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

3. "*Financial organization*" means any savings and loan association, building and loan association, credit union, co-operative bank or investment company, engaged in business in this state.

4. "*Holder*" means any person in possession of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this chapter.

5. "*Life insurance corporation*" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

6. "*Money order*" includes an express money order and a personal money order, on which the remitter is the purchaser. "*Money order*" does not include a bank money order or any other instrument sold by a banking or financial organization if the seller has obtained the name and address of the payee.

7. "*Owner*" means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this chapter, or that person's legal representative.

8. "*Person*" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

9. "*Utility*" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

⁹⁵ Acts, ch 34, §1

NEW subsection 6 and former subsections 6-8 renumbered as 7-9

556.2 Property held by banking or financial organizations or by business associations.

The following property held or owing by a banking or financial organization or by a business association is presumed abandoned:

1. Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend, excluding any

charges that may lawfully be withheld, unless the owner has, within three years:

a. Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest.

b. Corresponded in writing with the banking organization concerning the deposit.

c. Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization. Such memorandum shall be dated and may have been prepared by the banking organization, in which case it shall be signed by an official of the bank, or it may have been prepared by the owner.

d. Had another relationship with the bank in which the owner has:

(1) Communicated in writing with the bank.

(2) Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the bank and if the bank communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship are regularly sent.

e. Been sent any written correspondence, notice, or information by first-class mail regarding the deposit by the banking organization on or after July 1, 1992, if the correspondence, notice, or information requests an address correction on the face of the envelope, and is not returned to the bank organization for nondelivery, and if the bank organization maintains a record of all returned mail.

2. Any funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit made in this state, and any interest or dividends, excluding any charges that may lawfully be withheld, unless the owner has within three years:

a. Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends.

b. Corresponded in writing with the financial organization concerning the funds or deposit.

c. Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization. Such memorandum shall be dated and may have been prepared by the financial organization, in which case it shall be signed by an officer of the financial organization, or it may have been prepared by the owner.

d. Had another relationship with the financial organization in which the owner has:

(1) Communicated in writing with the financial organization.

(2) Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the financial organization and if the financial organization communicates in writing with

the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship are regularly sent.

e. Been sent any written correspondence, notice, or information by first-class mail regarding the funds or deposits by the financial organization on or after July 1, 1992, if the correspondence, notice, or information requests an address correction on the face of the envelope, and is not returned to the financial organization for nondelivery, and if the financial organization maintains a record of all returned mail.

3. Any property described in subsections 1 and 2 which is automatically renewable is matured for purposes of subsections 1 and 2 upon the expiration of its initial time period, but in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration of the last time provided for which consent was given. However, consent to renewal is deemed to have been given if the owner is sent written notice of the renewal by first-class mail which requests an address correction on the face of the envelope, the notice is not returned for nondelivery, and the banking or financial organization maintains a record of all returned mail. If at the time period for delivery in section 556.13, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time period for delivery is extended until the time when no penalty or forfeiture would result.

4. Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and traveler's checks, that, with the exception of traveler's checks and money orders, has been outstanding for more than three years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of traveler's checks, that has been outstanding for more than fifteen years from the date of issuance, or, in the case of money orders, that has been outstanding for more than seven years from the date of issuance, unless the owner has within three years, or within fifteen years in the case of traveler's checks or seven years in the case of money orders, corresponded in writing with the banking or financial organization or business association concerned, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association. The memorandum shall be dated and may have been prepared by the banking or financial organization or business association, in which case it shall be signed by an officer of the banking or financial organization, or a member of the business association, or it may have been prepared by the owner.

5. Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than three years from the date on which the lease or rental period expired.

6. A banking organization or financial organization shall send to the owner of each account, to which none of the actions specified in paragraphs "a" through "e" of subsection 1 or "a" through "e" of subsection 2 have occurred during the preceding three calendar years, a notice by certified mail stating in substance the following:

According to our records, we have had no contact with you regarding (describe account) for more than three years. Under Iowa law, if there is a period of three years without contact, we may be required to transfer this account to the custody of the treasurer of state of Iowa as unclaimed property. You may prevent this by taking some action, such as a deposit or withdrawal, which indicates your interest in this account or by signing this form and returning it to us.

I desire to keep the above account open and active.

.....
Your signature

The notice required under this section shall be mailed within thirty days of the lapse of the three-year period in which there is no activity. The cost of the certified mail of the notice required in this section may be deducted from the account by the banking or financial organization.

95 Acts, ch 34, §2
Subsection 4 amended

556.11 Report of abandoned property.

1. Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the state treasurer with respect to the property as hereinafter provided.

2. The report shall be verified and shall include:

a. Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of twenty-five dollars or more presumed abandoned under this chapter.

b. In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and the insured's or annuitant's last known address according to the life insurance corporation's records.

c. The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under twenty-five dollars each may be reported in aggregate.

d. The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property.

e. Other information which the state treasurer prescribes by rule as necessary for the administration of this chapter.

3. If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed names while holding the property, the holder shall file with the holder's report all prior known names and addresses of each holder of the property.

4. The report shall be filed annually before November 1 for the fiscal year ending on the preceding June 30. The treasurer of state may postpone the reporting date upon written request by any person required to file a report.

5. If the holder of property presumed abandoned under this chapter knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

6. Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

7. The initial report filed under this chapter shall include all items of property that would have been presumed abandoned if this chapter had been in effect during the ten-year period preceding its effective date.

All agreements to pay compensation to recover or assist in the recovery of property reported under this section, made within twenty-four months after the date payment or delivery is made under section 556.13 are unenforceable. However, such agreements made after twenty-four months from the date of payment or delivery are valid if the fee or compensation agreed upon is not more than fifteen percent of the recoverable property, the agreement is in writing and signed by the owner, and the writing discloses the nature and value of the property and the name and address of the person in possession. This section does not prevent an owner from asserting, at any time, that an agreement to locate property is based upon excessive or unjust consideration. This section does not apply to an owner who has a bona fide fee contract with a practicing attorney and counselor as described in chapter 602, article 10.

95 Acts, ch 34, §3
Subsection 4 amended

556.12 Notice and publication of lists of abandoned property.

1. If a report has been filed with the treasurer of state, or property has been paid or delivered to the treasurer of state, for the fiscal year ending on June

30 as required by section 556.11, the treasurer of state shall provide for the publication annually of at least one notice not later than the following November 30. Each notice shall be published at least once each week for two successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If an address is not listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has its principal place of business within this state.

2. The published notice shall contain:

a. The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

b. A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the state treasurer.

c. A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five days from the date of the second published notice, the abandoned property will be placed not later than eighty-five days after such publication date in the custody of the state treasurer to whom all further claims must thereafter be directed.

3. The state treasurer is not required to publish in such notice any item of less than twenty-five dollars unless the treasurer deems such publication to be in the public interest.

4. Within one hundred twenty days from the receipt of the report required by section 556.11, the state treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars or more presumed abandoned under this chapter.

5. The mailed notice shall contain:

a. A statement that, according to a report filed with the state treasurer, property is being held to which the addressee appears entitled.

b. The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

c. A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the state treasurer to whom all further claims must be directed.

6. This section is not applicable to sums payable on traveler's checks or money orders presumed abandoned under section 556.2.

95 Acts, ch 34, §4
Subsection 1 amended

556.22 Elections by the treasurer of state.

1. The treasurer of state may elect to allow a holder to file a report as provided in section 556.11,

or to deliver or pay property to the treasurer, before the property is presumed abandoned, upon consent of the treasurer and according to terms and conditions prescribed by the treasurer.

2. The treasurer of state, after receiving reports of property deemed abandoned pursuant to this chapter, may decline to receive any property reported which the treasurer deems to have a value less than the cost of giving notice and holding sale, or the treasurer may, if the treasurer deems it desirable

because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within one hundred twenty days after filing the report required under section 556.11, the treasurer shall be deemed to have elected to receive the custody of the property.

95 Acts, ch 34, §5
Section amended

CHAPTER 556F

LOST PROPERTY

556F.2 Warrant — appraisal — return — record.

The district judge, district associate judge, judicial magistrate, or district court clerk shall thereupon issue a warrant, directed to some peace officer, commanding the peace officer to summon three respectable householders of the neighborhood, who shall proceed without delay to examine and appraise the property, including cargo, tackle, rigging, and other appendages if applicable, and to submit a report regarding the examination and appraisal to the magistrate, judge, or clerk issuing the warrant, who shall transmit a certified copy to the county auditor to be recorded in a lost property book in the auditor's office.

95 Acts, ch 49, §18
Section amended

556F.7 When owner unknown.

If the owner is unknown, the finder shall, within five days after finding the property, take the money, bank notes, and a description of any other property before the county auditor of the county where the property was found, and provide an affidavit describing the property, the time when and place where the

property was found, and attesting that no alteration has been made in the appearance of the property since the finding. The county auditor shall enter a description of the property and the value thereof, as nearly as the auditor can determine it, in the auditor's lost property book, together with the affidavit of the finder.

95 Acts, ch 49, §19
Section amended

556F.16 Responsibility of taker-up.

If the taker-up of any watercraft, logs, or lumber, or finder of lost goods, bank notes, or other things, takes reasonable care of the property, and any unavoidable accident happens to the property without the fault or neglect of the finder or taker-up before the owner has an opportunity of reclaiming the property, the taker-up or finder shall not be accountable for the unavoidable accident, if within ten days of the accident, the finder or taker-up certifies the accident to the county auditor, who shall make an entry of the accident in the auditor's lost property book.

95 Acts, ch 49, §20
Section amended

CHAPTER 561

HOMESTEAD

561.19 Exemption in hands of issue.

Where the homestead descends to the issue of either spouse the issue shall be held exempt from any antecedent debts of the issue's parents or antecedent debts of the issue, except those of the owner of the homestead contracted prior to acquisition of the

homestead or those created under section 249A.5 relating to the recovery of medical assistance payments.

95 Acts, ch 68, §6
Section amended

CHAPTER 562A

UNIFORM RESIDENTIAL LANDLORD AND TENANT LAW

562A.5 Exclusions from application of chapter.

Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

1. Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service.
2. Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to the purchaser's interest.
3. Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization.
4. Transient occupancy in a hotel, motel or other similar lodgings.
5. Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises.
6. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a co-operative.
7. Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

8. Occupancy in housing owned by a nonprofit organization whose purpose is to provide transitional housing for persons released from drug or alcohol treatment facilities and in housing for homeless persons.

95 Acts, ch 125, §2
NEW subsection 8

562A.6 General definitions.

Subject to additional definitions contained in subsequent articles of this chapter which apply to specific articles or its parts, and unless the context otherwise requires, in this chapter:

1. "*Building and housing codes*" include a law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of a premise or dwelling unit.
2. "*Business*" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.
3. "*Dwelling unit*" means a structure or the part of a structure that is used as a home, residence, or sleeping place.
4. "*Good faith*" means honesty in fact in the conduct of the transaction concerned.
5. "*Landlord*" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by section 562A.13.

6. "*Owner*" means one or more persons, jointly or severally, in whom is vested:

- a. All or part of the legal title to property; or
- b. All or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession.

7. "*Premises*" means a dwelling unit and the structure of which it is a part and facilities and appurtenances of it and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

8. "*Reasonable attorney's fees*" means fees determined by the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the tenant or landlord.

9. "*Rent*" means a payment to be made to the landlord under the rental agreement.

10. "*Rental agreement*" means an agreement written or oral, and a valid rule, adopted under section 562A.18, embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

11. "*Rental deposit*" means a deposit of money to secure performance of a residential rental agreement, other than a deposit which is exclusively in advance payment of rent.

12. "*Roomer*" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling unit and other dwelling units. Major facility in the case of a bathroom means toilet, or either a bath or shower, and in the case of a kitchen means refrigerator, stove or sink.

13. "*Single family residence*" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.

14. "*Tenant*" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of another.

15. "*Transitional housing*" means temporary or nonpermanent housing.

95 Acts, ch 125, §3
NEW subsection 15

562A.21 Noncompliance by the landlord — in general.

1. Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with section 562A.15 materially affecting health and safety, the tenant may elect to commence an action under this section and shall deliver a written notice to the

landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if the breach is not remedied in seven days, and the rental agreement shall terminate and the tenant shall surrender as provided in the notice subject to the following:

a. If the breach is remediable by repairs or the payment of damages or otherwise, and if the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.

b. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the tenant may terminate the rental agreement upon at least seven days' written notice specifying the breach and the date of termination of the rental agreement unless the landlord has exercised due diligence and effort to remedy the breach which gave rise to the noncompliance.

c. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

2. Except as provided in this chapter, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or section 562A.15 unless the landlord demonstrates affirmatively that the landlord has exercised due diligence and effort to remedy any noncompliance, and that any failure by the landlord to remedy any noncompliance was due to circumstances reasonably beyond the control of the landlord. If the landlord's noncompliance is willful the tenant may recover reasonable attorney's fees.

3. The remedy provided in subsection 2 is in addition to any right of the tenant arising under subsection 1.

4. If the rental agreement is terminated, the landlord shall return all prepaid rent and security recoverable by the tenant under section 562A.12.

95 Acts, ch 125, §4, 5

Subsection 1, unnumbered paragraph 1 and paragraph b amended

562A.27 Noncompliance with rental agreement — failure to pay rent.

1. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with section 562A.17 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if the breach is not remedied in seven days, and the rental agreement shall terminate as provided in the notice subject to the provisions of this section. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not

terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least seven days' written notice specifying the breach and the date of termination of the rental agreement.

2. If rent is unpaid when due and the tenant fails to pay rent within three days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

3. Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for noncompliance by the tenant with the rental agreement or section 562A.17 unless the tenant demonstrates affirmatively that the tenant has exercised due diligence and effort to remedy any noncompliance, and that the tenant's failure to remedy any noncompliance was due to circumstances beyond the tenant's control. If the tenant's noncompliance is willful, the landlord may recover reasonable attorney's fees.

4. In any action by a landlord for possession based upon nonpayment of rent, proof by the tenant of the following shall be a defense to any action or claim for possession by the landlord, and the amounts expended by the claimant in correcting the deficiencies shall be deducted from the amount claimed by the landlord as unpaid rent:

a. That the landlord failed to comply either with the rental agreement or with section 562A.15; and

b. That the tenant notified the landlord at least seven days prior to the due date of the tenant's rent payment of the tenant's intention to correct the condition constituting the breach referred to in paragraph "a" at the landlord's expense; and

c. That the reasonable cost of correcting the condition constituting the breach is equal to or less than one month's periodic rent; and

d. That the tenant in good faith caused the condition constituting the breach to be corrected prior to receipt of written notice of the landlord's intention to terminate the rental agreement for nonpayment of rent.

95 Acts, ch 125, §6, 7

Subsection 1 amended

Subsection 4, paragraph b amended

562A.27A Termination for creating a clear and present danger to others.

1. Notwithstanding section 562A.27 or 648.3, if a tenant has created or maintained a threat constituting a clear and present danger to the health or safety of other tenants, the landlord, the landlord's employee or agent, or other persons on or within one thousand feet of the landlord's property, the landlord, after a single three days' written notice of termination and notice to quit, may file suit against the tenant for recovery of possession of the premises pursuant to chapter 648, except as otherwise provided in subsection 3. The petition shall state the

incident or incidents giving rise to the notice of termination and notice to quit. The tenant shall be given the opportunity to contest the termination in the court proceedings by notice thereof at least three days prior to the hearing.

2. A clear and present danger to the health or safety of other tenants, the landlord, the landlord's employees or agents, or other persons on or within one thousand feet of the landlord's property includes, but is not limited to, any of the following activities of the tenant or of any person on the premises with the consent of the tenant:

a. Physical assault or the threat of physical assault.
 b. Illegal use of a firearm or other weapon, the threat to use a firearm or other weapon illegally, or possession of an illegal firearm.

c. Possession of a controlled substance unless the controlled substance was obtained directly from or pursuant to a valid prescription or order by a licensed medical practitioner while acting in the course of the practitioner's professional practice. This paragraph applies to any other person on the premises with the consent of the tenant, but only if the tenant knew of the possession by the other person of a controlled substance.

3. This section shall not apply to a tenant if the activities causing the clear and present danger, as defined in subsection 2, are conducted by a person on the premises other than the tenant and the tenant takes at least one of the following measures against the person conducting the activities:

a. The tenant seeks a protective order, restraining order, order to vacate the homestead, or other similar relief pursuant to chapter 236, 598, or 910A, or any other applicable provision which would apply to the person conducting the activities causing the clear and present danger.

b. The tenant reports the activities causing the clear and present danger to a law enforcement agency or the county attorney in an effort to initiate a criminal action against the person conducting the activities.

c. The tenant writes a letter to the person conducting the activities causing the clear and present danger, telling the person not to return to the premises and that a return to the premises may result in a trespass or other action against the person, and the tenant sends a copy of the letter to a law enforcement agency whose jurisdiction includes the premises. If the tenant has previously written a letter to the person as provided in this paragraph, without taking an action specified in paragraph "a" or "b" or filing a trespass or other action, and the person to whom the letter was sent conducts further activities causing a clear and present danger, the tenant must take one of the actions specified in paragraph "a" or "b" to be exempt from proceedings pursuant to subsection 1.

However, in order to fall within the exemptions provided within this subsection, the tenant must provide written proof to the landlord, prior to the commencement of a suit against the tenant, that the tenant has taken one of the measures specified in paragraphs "a" through "c".

95 Acts, ch 125, §8, 9
 Subsection 1 amended
 Subsection 2, unnumbered paragraph 1 amended

562A.28 Failure to maintain.

If there is noncompliance by the tenant with section 562A.17, materially affecting health and safety, that can be remedied by repair or replacement of a damaged item or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within seven days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a competent manner and submit an itemized bill for the actual and reasonable cost or the fair and reasonable value of it as rent on the next date when periodic rent is due, or if the rental agreement has terminated, for immediate payment.

95 Acts, ch 125, §10
 Section amended

CHAPTER 562B

MOBILE HOME PARKS RESIDENTIAL LANDLORD AND TENANT LAW

562B.25A Termination for creating a clear and present danger to others.

1. Notwithstanding section 562B.25 or 648.3, if a tenant has created or maintained a threat constituting a clear and present danger to the health or safety of other tenants, the landlord, the landlord's employee or agent, or other persons on or within one thousand feet of the landlord's property, the landlord, after a single three days' written notice of termination and notice to quit, may file suit against the tenant for recovery of possession of the premises pursuant to chapter 648, except as otherwise provided in subsection 3. The petition shall state the incident or incidents

giving rise to the notice of termination and notice to quit. The tenant shall be given the opportunity to contest the termination in the court proceedings by notice thereof at least three days prior to the hearing.

2. A clear and present danger to the health or safety of other tenants, the landlord, the landlord's employees or agents, or other persons on or within one thousand feet of the landlord's property includes, but is not limited to, any of the following activities of the tenant or of any person on the premises with the consent of the tenant:

a. Physical assault or the threat of physical assault.

b. Illegal use of a firearm or other weapon, the threat to use a firearm or other weapon illegally, or possession of an illegal firearm.

c. Possession of a controlled substance unless the controlled substance was obtained directly from or pursuant to a valid prescription or order by a licensed medical practitioner while acting in the course of the practitioner's professional practice. This paragraph applies to any other person on the premises with the consent of the tenant, but only if the tenant knew of the possession by the other person of a controlled substance.

3. This section shall not apply to a tenant if the activities causing the clear and present danger, as defined in subsection 2, are conducted by a person on the premises other than the tenant and the tenant takes at least one of the following measures against the person conducting the activities:

a. The tenant seeks a protective order, restraining order, order to vacate the homestead, or other similar relief pursuant to chapter 236, 598, or 910A, or any other applicable provision which would apply to the person conducting the activities causing the clear and present danger.

b. The tenant reports the activities causing the clear and present danger to a law enforcement agency or the county attorney in an effort to initiate

a criminal action against the person conducting the activities.

c. The tenant writes a letter to the person conducting the activities causing the clear and present danger, telling the person not to return to the premises and that a return to the premises may result in a trespass or other action against the person, and the tenant sends a copy of the letter to a law enforcement agency whose jurisdiction includes the premises. If the tenant has previously written a letter to the person as provided in this paragraph, without taking an action specified in paragraph "a" or "b" or filing a trespass or other action, and the person to whom the letter was sent conducts further activities causing a clear and present danger, the tenant must take one of the actions specified in paragraph "a" or "b" to be exempt from proceedings pursuant to subsection 1.

However, in order to fall within the exemptions provided within this subsection, the tenant must provide written proof to the landlord, prior to the commencement of a suit against the tenant, that the tenant has taken one of the measures specified in paragraphs "a" through "c".

95 Acts, ch 125, §11, 12

Subsection 1 amended

Subsection 2, unnumbered paragraph 1 amended

CHAPTER 566A

CEMETERY REGULATION

See also chapter 523I

566A.1 Applicability of chapter — requirements for certain organizations.

1. A corporation or other form of organization engaging in the business of the ownership, maintenance, or operation of a cemetery, which provides lots or other interment space for the remains of human bodies, is subject to this chapter. However, a religious cemetery is subject only to subsection 2, and sections 566A.2A and 566A.2B. A cemetery with average retail sales equal to or less than five thousand dollars for the previous three calendar years is exempt from section 566A.2C. Political subdivisions of the state which are counties are exempt from this chapter. Political subdivisions of the state other than counties are subject only to sections 566A.1A, 566A.2A, 566A.2B, and 566A.2D.

2. An organization which establishes a fund for the perpetual care of a cemetery shall establish the fund as an irrevocable trust to provide for the care and maintenance of the cemetery for which it was established, and shall provide for the appointment of a trustee, with perpetual succession, in case the organization is dissolved or ceases to be responsible for the cemetery's care and maintenance.

95 Acts, ch 149, §29
Subsection 1 amended

566A.1A Definitions.

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

1. "Agent" means a person authorized by a cemetery or a cemetery operator to represent the cemetery in dealing with the public.

2. "Cemetery" means a cemetery, mausoleum, columbarium, or other space held for the purpose of burial, entombment, or inurnment of human remains and where such space is offered for sale to the public.

3. "Cemetery operator" means a person who owns, controls, operates, or manages a cemetery, who is responsible for the cemetery's care and maintenance, and who controls the opening and closing of all graves, crypts, and niches.

4. "Columbarium" means a structure or room or other space in a building or structure used or intended to be used for the inurnment or deposit of cremated human remains.

5. "Commissioner" means the commissioner of insurance or the deputy appointed under section 502.601.

6. "Deed" means the assignment or conveyance of interment rights.

7. "Grave" means a piece of land that is used or intended to be used for the underground burial of

human remains, other than an underground mausoleum or columbarium space.

8. "*Human remains*" means the body of a deceased individual that is in any stage of decomposition or has been cremated.

9. "*Interment*" means the disposition of human remains by earth burial, entombment, or inurnment.

10. "*Interment rights*" means a right of use conveyed by contract or property ownership to inter human remains in a columbarium, grave, mausoleum, lawn crypt, or undeveloped space.

11. "*Lawn crypt*" means an outer enclosure, for a casket or similar inner burial container which is permanently installed below ground prior to the time of actual interment. A lawn crypt may permit single or multiple interments in a grave space.

12. "*Mausoleum*" means a building, structure, or part of a building or structure that is used or intended to be used for the entombment of human remains.

13. "*Mausoleum space*" means a niche, crypt, or specific place in a mausoleum that contains or is intended to contain human remains.

14. "*Niche*" means a recess in the wall of a mausoleum or columbarium for the deposit of human remains.

15. "*Perpetual care*" means maintenance, repair, and care of all interment spaces, features, buildings, roadways, parking lots, water supply, and other existing cemetery structures subject to the provisions of section 566A.3 and includes the general overhead expenses needed to accomplish such maintenance, repair, and care.

16. "*Perpetual care cemetery*" means a cemetery which has established a perpetual care fund for the maintenance, repair, and care of all interment spaces subject to perpetual care within the cemetery in compliance with section 566A.3.

17. "*Religious cemetery*" means a cemetery that is owned, operated, or controlled by a recognized church, religious society, association, or denomination.

18. "*Sale*" means a transfer for consideration of any interest in ownership, title, or right of use.

19. "*Undeveloped space*" means a mausoleum, columbarium space, or lawn crypt that is not ready for the burial of human remains on the date of the sale of the space.

95 Acts, ch 149, §30
NEW section

566A.2A Perpetual care cemetery registry.

A perpetual care cemetery shall maintain a registry of individuals who have purchased items subject to the perpetual care requirements of this chapter including the amount deposited in trust for each individual. The registry shall include all transactions entered into on or after July 1, 1995.

95 Acts, ch 149, §31
NEW section

566A.2B Interment rights agreement — requirements — contents.

An agreement for interment rights under this chapter must be written in clear, understandable language and do all of the following:

1. Identify the seller and purchaser.
2. Identify the salesperson.
3. Specify the interment rights to be provided and the cost of each item.
4. State clearly the conditions on which substitution will be allowed.
5. Set forth the total purchase price and the terms under which it is to be paid.
6. State clearly whether the agreement is a revocable or irrevocable contract, and, if revocable, which parties have the authority to revoke the agreement.
7. State the amount or percentage of money to be placed in the cemetery's perpetual care and maintenance guarantee fund.
8. Set forth an explanation that the perpetual care and maintenance guarantee fund is an irrevocable trust, that deposits cannot be withdrawn even in the event of cancellation, and that the trust's income shall be used by the cemetery for its maintenance, repair, and care.
9. Set forth an explanation of any fees or expenses that may be charged.
10. Set forth an explanation of whether amounts for perpetual care will be deposited in trust upon payment in full or on an allocable basis as payments are made.
11. Set forth an explanation of whether initial payments on agreements for multiple items of funeral and cemetery merchandise or services, or both, will be allocated first to the purchase of a grave, niche, columbarium space, or mausoleum space. If such an allocation is to be made, the agreement shall provide for the immediate transfer of such interment rights upon payment in full and prominently state that any applicable trust deposits under chapters 523A and 523E will not be made until the cemetery has received payment in full for the interment rights. The transfer of an undeveloped space may be deferred until such space is ready for burial.
12. If the transfer of an undeveloped space will be deferred until the space is ready for burial as permitted in subsection 11, the agreement shall provide for some form of written acknowledgment upon payment in full, specify a reasonable time period for development of the space, describe what happens in the event of a death prior to development of the space, and provide for the immediate transfer of the interment rights when development of the space is complete.
13. Specify the purchaser's right to cancel and the damages payable for cancellation, if any.
14. State the name and address of the commissioner.

95 Acts, ch 149, §32
NEW section

566A.2C Annual report by nonperpetual care cemeteries.

1. A nonperpetual care cemetery shall file a written report with the insurance division within four months following the end of the cemetery's fiscal year. The report shall include all of the following:

- a. The name and address of the cemetery.
- b. An affidavit that the cemetery is a nonperpetual care cemetery in compliance with section 566A.5.
- c. Copies of all sales agreement forms used by the cemetery.

2. The commissioner shall permit the filing of a unified annual report in the event of commonly owned or affiliated cemeteries. A political subdivision subject to this section may commingle perpetual care funds for purposes of investment and administration and may file a single report, if each cemetery is appropriately identified and separate records are maintained for each cemetery.

3. The report shall be made under oath.

4. Notwithstanding chapter 22, all records maintained by the commissioner under this section are confidential and shall not be made available for inspection or copying except upon the approval of the commissioner or attorney general.

95 Acts, ch 149, §33
NEW section

566A.2D Annual report by perpetual care cemeteries.

1. A perpetual care cemetery shall file a written report as of the end of each fiscal year of the cemetery including the following:

- a. The name and address of the cemetery.
- b. The name and address of any trustee holding perpetual care and maintenance guarantee fund moneys.
- c. The name and address of any depository holding perpetual care and maintenance guarantee fund moneys.
- d. An affidavit that the cemetery is a perpetual care cemetery in compliance with section 566A.3.
- e. Copies of all sales agreement forms used by the cemetery.

f. The amount of the principal of the cemetery's perpetual care funds at the end of the fiscal year.

g. The number of interments made and the number of deeds issued during the cemetery's preceding fiscal year.

2. The report shall be filed with the insurance division within four months following the end of the cemetery's fiscal year in the form required by the commissioner.

3. The commissioner shall permit the filing of a unified annual report in the event of commonly owned or affiliated cemeteries. A political subdivision subject to this section may commingle perpetual care funds for purposes of investment and administration and may file a single report, if each cemetery is appropriately identified and separate records are maintained for each cemetery.

4. The commissioner shall establish by rule an audit fee to be filed with the annual report. The audit report fee shall be based on the number of deeds issued by the cemetery during the reporting period. The audit fee shall apply only to perpetual care cemeteries and shall be based on the approximate cost of regulation.

5. Notwithstanding chapter 22, all records maintained by the commissioner under this subsection are confidential and shall not be made available for inspection or copying except upon approval of the commissioner or attorney general.

95 Acts, ch 149, §34
NEW section

566A.3 Guarantee fund.

Any such organization subject to the provisions of this chapter which is organized or commences business in the state of Iowa after July 4, 1953 and desires to operate as a perpetual care cemetery shall, before selling or disposing of any interment space or lots, establish a minimum perpetual care and maintenance guarantee fund of twenty-five thousand dollars in cash. The perpetual care and maintenance guarantee fund shall be permanently set aside in trust to be administered under the jurisdiction of the district court of the county wherein the cemetery is located. The district court so having jurisdiction shall have full jurisdiction over the approval of trustees, reports and accounting of trustees, amount of surety bond required, and investment of funds. Only the income from such fund shall be used for the care and maintenance of the cemetery for which it was established.

To continue to operate as a perpetual care cemetery, any such organization shall set aside and deposit in the perpetual care fund not less than the following amounts for lots of interment space thereafter sold or disposed of:

1. A minimum of twenty percent of the gross selling price with a minimum of twenty dollars for each adult burial space, whichever is the greater.

2. A minimum of twenty percent of the gross selling price for each child's space with a minimum of five dollars for each space up to forty-two inches in length or ten dollars for each space up to sixty inches in length, whichever is the greater.

3. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars for each crypt in a public mausoleum, whichever is the greater.

4. A minimum of twenty percent of the gross selling price with a minimum of ten dollars for each inurnment niche in a public columbarium.

The initial perpetual care fund established for any cemetery shall remain in an irrevocable trust fund until such time as this fund has reached fifty thousand dollars, when it may be withdrawn at the rate of one thousand dollars from the original twenty-five thousand dollars for each additional three thousand dollars added to the fund, until all of the twenty-five thousand dollars has been withdrawn.

A perpetual care cemetery may require a contribution to the cemetery's perpetual care guarantee fund for each grave marker, tombstone, monument, or item of ornamental merchandise installed in the cemetery from the purchaser of such merchandise. A cemetery may establish a separate perpetual care fund for this purpose. The contribution, if required by the cemetery, shall be uniformly charged on every

installation and shall be set aside and deposited in the perpetual care trust fund. The contributions shall be nonrefundable and shall not be withdrawn from the trust fund once deposited.

95 Acts, ch 149, §35
NEW unnumbered paragraph 4

566A.5 Nonperpetual care cemeteries.

1. Each nonperpetual care cemetery shall post a legible sign in a conspicuous place in the office or offices where sales are conducted, and at or near the entrance of the cemetery or its administration building and readily accessible to the public stating: "This is a nonperpetual care cemetery". The lettering of these signs shall be of a size and style as approved by the commissioner by rule or order so that the signs can be read at a reasonable distance.

2. Each nonperpetual care cemetery shall also have printed or stamped at the head of all of its contracts, deeds, statements, letterheads, and advertising material, the legend: "This is a nonperpetual care cemetery", and shall not sell any lot or interment space in the cemetery unless the purchaser of the lot or interment space is informed that the cemetery is a nonperpetual care cemetery.

3. A nonperpetual care cemetery or cemetery operator or employee or agent of a nonperpetual care cemetery shall not advertise or represent that the cemetery is a perpetual care cemetery or use any similar title, description, or term indicating that the cemetery provides guaranteed or permanent maintenance and care or that the cemetery has a trust fund or endowment fund to pay for the expenses of such care.

95 Acts, ch 149, §36
Section stricken and rewritten

566A.12 Administration.

1. *Cemetery registry.* The commissioner shall establish and maintain a public registry of perpetual care cemeteries.

2. *Investigations and audits.* The commissioner or the attorney general, for the purpose of discovering violations of this chapter or rules adopted pursuant to this chapter, may do any of the following:

a. Audit any cemetery, for cause or on a random basis, to determine compliance with this chapter. A cemetery shall make available to the commissioner or attorney general the cemetery's deed registry and those books, accounts, records, and files related to the sale of interment rights. Notwithstanding chapter 22, all business records and files acquired by the commissioner or attorney general pursuant to an audit under this subsection are confidential and shall not be made available for inspection or copying unless ordered by a court for good cause shown. If it is determined pursuant to an audit that a material violation of this chapter or rules adopted pursuant to this chapter has occurred, the cost of the audit may be assessed to the cemetery.

b. Administer oaths and affirmations, subpoena witnesses, receive evidence, and require the production of documents and records in connection with an

investigation or proceeding being conducted pursuant to this chapter.

c. Apply to the district court for issuance of an order requiring a person's appearance before the commissioner or attorney general, or a designee of either or both, where the person has refused to obey a subpoena issued by the commissioner or attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

3. *Cease and desist orders.* If an audit or investigation provides reasonable evidence that a person has violated this chapter, or any rule adopted pursuant to this chapter, the commissioner may issue an order directed at the person to cease and desist from engaging in such act or practice.

4. *Receiverships.*

a. The commissioner shall notify the attorney general if the commissioner finds that a perpetual care cemetery subject to regulation under this chapter meets one or more of the following grounds for the establishment of a receivership:

(1) Is insolvent.

(2) Has utilized trust funds for personal or business purposes in a manner inconsistent with the requirements of this chapter, and the amount of funds currently held in the trust is less than the amount required by this chapter.

b. The attorney general may apply to the district court in any county of the state for a receivership. Upon proof of any of the grounds for a receivership described in this section the court may grant a receivership.

5. *Injunctions.* The attorney general may apply to the district court for an injunction to restrain any cemetery subject to this chapter and any agents, employees, trustees, or associates of the cemetery from engaging in conduct or practices deemed a violation of this chapter or rules adopted pursuant to this chapter. Upon proof of any violation of this chapter described in the petition for injunction, the court may grant the injunction. Failure to obey a court order under this subsection constitutes contempt of court.

95 Acts, ch 149, §37
Implementation of 1995 amendments contingent upon appropriation; 95 Acts, ch 149, §41
Section stricken and rewritten

566A.13 Violations and penalties.

A violation of this chapter or rules adopted by the commissioner pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph "a". The remedies and penalties provided by section 714.16, including but not limited to provisions relating to injunctive relief and penalties, apply to a violation of this chapter.

95 Acts, ch 149, §38
Section amended

566A.14 Rules.

The division of insurance may adopt rules pursu-

ant to chapter 17A as necessary and appropriate to administer this chapter.

95 Acts, ch 149, §39
NEW section

566A.15 Cemetery fund.

A special revenue fund is created in the state treasury, under the control of the commissioner, to be known as the insurance division cemetery fund. Commencing July 1, 1995, filing fees received pursuant to section 566A.2C and one dollar from the audit fee for each deed reported on the annual report required by section 566A.2D, executed during the preceding fiscal year, shall be deposited in the insurance division cemetery fund by the commissioner. However, if the balance of the fund on July 1 of any

year exceeds two hundred thousand dollars, the allocation to the fund shall not be made, and the total sum of the fees paid pursuant to section 566A.2D shall be deposited in the general fund of the state. Notwithstanding section 8.33, moneys in the fund shall not revert to the general fund but shall remain in the cemetery fund. Moneys in the cemetery fund are appropriated to the insurance division and, subject to authorization by the commissioner, may be used to pay the expenses of that office incurred in the administration of the audit, investigative, and enforcement duties and obligations imposed under this chapter, and the expenses of receiverships established pursuant to section 566A.12.

95 Acts, ch 149, §40
NEW section

CHAPTER 570A

AGRICULTURAL SUPPLY DEALER'S LIEN

570A.1 Definitions.

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

1. "*Agricultural chemical*" means a fertilizer or agricultural chemical which is applied to crops or land which is used for the raising of crops, including but not limited to fertilizer as defined in section 200.3, and pesticide as defined in section 206.2.

2. "*Agricultural purpose*" means a purpose related to the production, harvest, marketing, or transportation of agricultural products by a person who cultivates, plants, propagates or nurtures the agricultural products including agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any other products raised or produced on farms.

3. "*Agricultural supply dealer*" means a person engaged in the retail sale of agricultural chemicals, seed, feed, or petroleum products used for an agricultural purpose.

4. "*Certified request*" means a request delivered by registered or certified mail, or a request delivered in person in writing signed and dated by the respective parties.

5. "*Farmer*" means a person engaged in a business which has an agricultural purpose.

6. "*Feed*" means a commercial feed, feed ingredient, mineral feed, drug, animal health product, or customer-formula feed which is used for the feeding of livestock, including but not limited to feed as defined in section 198.3.

7. "*Financial history*" means the record of a person's current loans, the date of a person's loans, the amount of the loans, the person's payment record on the loans, current liens against the person's property, and the person's most recent financial statement.

8. "*Financial institution*" means a bank, credit union, insurance company, mortgage banking company or savings and loan association, industrial loan company, production credit association, farmer's home administration, or like institution which operates or has a place of business in this state.

9. "*Labor*" means labor performed in the application, delivery, or preparation of a product defined in subsections 1, 6, 12, and 14.

10. "*Letter of credit*" means an engagement by a financial institution to honor drafts or other demands for payment.

11. "*Livestock*" means cattle, sheep, swine, ostriches, rheas, emus, poultry, or other animals or fowl.

12. "*Petroleum product*" means a motor fuel or special fuel which is used in the production of crops and livestock, including but not limited to motor fuel as defined in section 452A.2.

13. "*Sale on a credit basis*" means a transaction in which the purchase price is due on a date after the date of the sale.

14. "*Seed*" means agricultural seeds which are used in the production of crops, including but not limited to agricultural seed as defined in section 199.1.

95 Acts, ch 43, §13
Subsection 11 amended

CHAPTER 579

LIENS FOR CARE OF STOCK AND STORAGE OF BOATS AND MOTOR VEHICLES

579.1 Nature of liens.

1. Livery and feed stable keepers, herders, feeders, or keepers of stock shall have a lien on all property coming into their hands, as such, for their charges and the expense of keeping, but such lien shall be subject to chapter 579A and all prior liens of record.

2. Places for the storage of motor vehicles, boats, and boat engines and boat motors shall have a lien on all property coming into their hands, as such, for their charges and the expense of keeping, but such lien shall be subject to all prior liens of record.

95 Acts, ch 59, §1
Section amended

CHAPTER 579A

CUSTOM CATTLE FEEDLOT LIEN

579A.1 Definitions.

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

1. "Cattle" means an animal classified as bovine, regardless of the age or sex of the animal.
2. "Custom cattle feedlot" means a feedlot where cattle owned by a person are subject to care and feeding performed by another person.
3. "Custom cattle feedlot operator" means the owner of a custom cattle feedlot or a person managing the custom cattle feedlot, if the person is authorized by the owner to file and enforce a lien under this chapter.
4. "Feedlot" means the same as defined in section 172D.1.
5. "Processor" means the same as defined in section 9H.1.

95 Acts, ch 59, §2
NEW section

579A.2 Establishment of lien — priority.

1. A custom cattle feedlot operator shall have a lien upon the cattle and the identifiable cash proceeds from the sale of the cattle for the amount of the contract price for the feed and care of the livestock at the custom cattle feedlot agreed upon by the custom cattle feedlot operator and the person who owns the cattle, which may be enforced as provided in section 579A.3.

2. The lien is created at the time the cattle arrive at the custom cattle feedlot and continues for one year after the cattle have left the custom cattle feedlot. In order to preserve the lien, the custom cattle feedlot operator must, within twenty days after the cattle arrive at the custom cattle feedlot, file in the office of the secretary of state, a lien statement on a form prescribed by the secretary of state. The secretary of state shall charge a fee of not more than ten dollars for filing the statement. The secretary of state may adopt rules pursuant to chapter 17A for the

electronic filing of the statements. The statement must include all of the following:

- a. An estimate of the amount of feed and care provided to the cattle pursuant to the contract.
 - b. The estimated duration of the period when the cattle are subject to feed and care at the custom cattle feedlot.
 - c. The name of the party to the contract whose cattle are subject to feed and care at the custom cattle feedlot.
 - d. The description of the location of the custom cattle feedlot, by county and township.
 - e. The signature of the person filing the form.
3. Except as provided in chapter 581, a lien created under this section until preserved and a lien preserved under this section is superior to and shall have priority over a conflicting lien or security interest in the cattle, including a lien that was perfected prior to the creation of the lien provided under this section.

95 Acts, ch 59, §3
NEW section

579A.3 Enforcement.

While the cattle are located at the custom cattle feedlot, the custom cattle feedlot operator may foreclose a lien created in section 579A.2 in the manner provided for the foreclosure of secured transactions as provided in sections 554.9504, 554.9506, and 554.9507. After the cattle have left the custom cattle feedlot, the custom cattle feedlot operator may enforce the lien by commencing an action at law for the amount of the lien against either of the following:

1. The holder of the identifiable cash proceeds from the sale of the cattle.
2. The processor who has purchased the cattle within three days after the cattle have left the custom cattle feedlot.

95 Acts, ch 59, §4
NEW section

CHAPTER 580

LIEN FOR SERVICES OF ANIMALS

580.1 Nature of lien — forfeiture.

Except as provided in chapter 579A, the owner or keeper of any stallion, bull or jack kept for public service, or any person, firm, or association which invokes pregnancy of animals for the public by means of artificial insemination shall have a prior lien on the progeny of such stallion, bull, artificial insemination or jack, to secure the amount due such owner,

artificial inseminator or keeper for the service resulting in such progeny, but no such lien shall obtain where the owner or keeper misrepresents the animal by a false or spurious pedigree, or fails to substantially comply with the laws of Iowa relating to such animals.

95 Acts, ch 59, §5
Section amended

CHAPTER 582

HOSPITAL LIEN

582.4 Lien book — fees.

Every clerk of the district court shall, at the expense of the county, provide a suitable well-bound book to be called the hospital lien docket in which, upon the filing of any lien claim under the provisions of this chapter, the clerk shall enter the name of the injured person, the date of the accident, and the name

of the hospital or other institution making the claim. The clerk shall make a proper index of the same in the name of the injured person and the clerk shall collect a fee of ten dollars for filing each lien claim.

95 Acts, ch 91, §2
Section amended

CHAPTER 595

MARRIAGE

Modernization of vital statistics records system effective July 1, 1997; cooperation during transition period; 95 Acts, ch 124, §§25, 26
See 95 Acts, ch 124, §13-21 and 24-26 for future amendments to ch 595 relating to transfer of vital statistics duties from clerk of the district court effective July 1, 1997

595.10 Who may solemnize.

Marriages may be solemnized by:

1. A judge of the supreme court, court of appeals, or district court, including a district associate judge, associate juvenile judge, or a judicial magistrate, and including a senior judge as defined in section

602.9202, subsection 1.

2. A person ordained or designated as a leader of the person's religious faith.

95 Acts, ch 92, §3
Subsection 1 amended

CHAPTER 598

DISSOLUTION OF MARRIAGE

598.7A Dissolution of marriage — mediation.

In addition to the custody mediation provided pursuant to section 598.41, unless the court determines that a history of domestic abuse exists as specified in section 598.41, subsection 3, paragraph "j", or unless the court determines that direct physical harm or

significant emotional harm to the child, other children, or a parent is likely to result, on the application of either party, or on the court's own motion, the court may require the parties to participate in mediation to attempt to resolve differences between the parties relative to the granting of a marriage dissolution decree, if the court determines that mediation may

effectuate a resolution of the differences without court intervention.

The costs of mediation shall be paid in full or in part by the parties, as determined by the court and taxed as court costs.

95 Acts, ch 183, §1
NEW section

598.8 Hearings — exceptions.

1. Except as otherwise provided in subsection 2, hearings for dissolution of marriage shall be held in open court upon the oral testimony of witnesses, or upon the depositions of such witnesses taken as in other equitable actions or taken by a commissioner appointed by the court. The court may in its discretion close the hearing. Hearings held for the purpose of determining child custody may be limited in attendance by the court. Upon request of either party, the court shall provide security in the courtroom during the custody hearing if a history of domestic abuse relating to either party exists.

2. The court may enter a decree of dissolution without a hearing under either of the following circumstances:

a. All of the following circumstances have been met:

(1) The parties have certified in writing that there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

(2) All documents required by the court and by statute have been filed.

(3) The parties have entered into a written agreement settling all of the issues involved in the dissolution of marriage.

(4) There are no children of the marriage for whom support, as defined under section 598.1, may be ordered.

b. The respondent has not entered a general or special appearance or filed a motion or pleading in the case, the waiting period provided under section 598.19 has expired, and all of the following circumstances have been met:

(1) The petitioner has certified in writing that there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

(2) All documents required by the court and by statute have been filed.

(3) There are no children of the marriage for whom support, as defined under section 598.1, may be ordered.

95 Acts, ch 165, §1; 95 Acts, ch 182, §21
See Code editor's note to §13B.8
Section amended

598.21 Orders for disposition and support.

1. Upon every judgment of annulment, dissolution or separate maintenance the court shall divide the property of the parties and transfer the title of the

property accordingly. The court may protect and promote the best interests of children of the parties by setting aside a portion of the property of the parties in a separate fund or conservatorship for the support, maintenance, education and general welfare of the minor children. The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties after considering all of the following:

a. The length of the marriage.

b. The property brought to the marriage by each party.

c. The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.

d. The age and physical and emotional health of the parties.

e. The contribution by one party to the education, training or increased earning power of the other.

f. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

g. The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of the children, or if the parties have joint legal custody, to the party having physical care of the children.

h. The amount and duration of an order granting support payments to either party pursuant to subsection 3 and whether the property division should be in lieu of such payments.

i. Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.

j. The tax consequences to each party.

k. Any written agreement made by the parties concerning property distribution.

l. The provisions of an antenuptial agreement.

m. Other factors the court may determine to be relevant in an individual case.

2. Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

3. Upon every judgment of annulment, dissolution or separate maintenance, the court may grant an order requiring support payments to either party for a limited or indefinite length of time after considering all of the following:

a. The length of the marriage.

b. The age and physical and emotional health of the parties.

c. The distribution of property made pursuant to subsection 1.

d. The educational level of each party at the time of marriage and at the time the action is commenced.

e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.

f. The feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.

g. The tax consequences to each party.

h. Any mutual agreement made by the parties concerning financial or service contributions by one party with the expectation of future reciprocation or compensation by the other party.

i. The provisions of an antenuptial agreement.

j. Other factors the court may determine to be relevant in an individual case.

4. The supreme court shall maintain uniform child support guidelines and criteria and review the guidelines and criteria at least once every four years, pursuant to the federal Family Support Act of 1988, Pub. L. No. 100-485. The initial review shall be performed within four years of October 12, 1989, and subsequently within the four-year period of the most recent review. It is the intent of the general assembly that, to the extent possible within the requirements of federal law, the court and the child support recovery unit consider the individual facts of each judgment or case in the application of the guidelines and determine the support obligation, accordingly. It is also the intent of the general assembly that in the supreme court's review of the guidelines, the supreme court shall do both of the following: emphasize the ability of a court to apply the guidelines in a just and appropriate manner based upon the individual facts of a judgment or case; and in determining monthly child support payments, consider other children for whom either parent is legally responsible for support and other child support obligations actually paid by either party pursuant to a court or administrative order.

a. Upon every judgment of annulment, dissolution, or separate maintenance, the court may order either parent or both parents to pay an amount reasonable and necessary for supporting a child. In establishing the amount of support, consideration shall be given to the responsibility of both parents to support and provide for the welfare of the minor child and of a child's need, whenever practicable, for a close relationship with both parents. There shall be a rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. A variation from the guidelines shall not be considered by a court without a record or written finding, based on stated reasons, that the guidelines would be un-

just or inappropriate as determined under the criteria prescribed by the supreme court.

The court shall order as child medical support a health benefit plan as defined in chapter 252E if available to either parent at a reasonable cost. A health benefit plan is considered reasonable in cost if it is employment-related or other group health insurance, regardless of the service delivery mechanism. The premium cost of the health benefit plan may be considered by the court as a reason for varying from the child support guidelines. If a health benefit plan is not available at a reasonable cost, the court may order any other provisions for medical support as defined in chapter 252E.

b. The guidelines prescribed by the supreme court shall be used by the department of human services in determining child support payments under sections 252C.2 and 252C.4. A variation from the guidelines shall not be considered by the department without a record or written finding, based on stated reasons, that the guidelines would be unjust or inappropriate as determined under criteria prescribed by the supreme court.

c. The guidelines prescribed by the supreme court shall incorporate provisions for medical support as defined in chapter 252E to be effective on or before January 1, 1991.

d. For purposes of calculating a support obligation under this section, the income of the parent from whom support is sought shall be used as the non-custodial parent income for purposes of application of the guidelines, regardless of the legal custody of the child.

e. Unless the special circumstances of the case justify a deviation, the court or the child support recovery unit shall establish a monthly child support payment of twenty-five dollars for a parent who is nineteen years of age or younger, who has not received a high school or high school equivalency diploma, and to whom each of the following apply:

(1) The parent is attending a school or program described as follows or has been identified as one of the following:

(a) The parent is in full-time attendance at an accredited school and is pursuing a course of study leading to a high school diploma.

(b) The parent is attending an instructional program leading to a high school equivalency diploma.

(c) The parent is attending a vocational education program approved pursuant to chapter 258.

(d) The parent has been identified by the director of special education of the area education agency as a child requiring special education as defined in section 256B.2.

(2) The parent provides proof of compliance with the requirements of subparagraph (1) to the child support recovery unit, if the unit is providing services under chapter 252B, or if the unit is not providing services pursuant to chapter 252B, to the court as the court may direct.

Failure to provide proof of compliance under this subparagraph is grounds for modification of the sup-

port order using the uniform child support guidelines and imputing an income to the parent equal to a forty-hour work week at the state minimum wage, unless the parent's education, experience, or actual earnings justify a higher income.

4A. If, during an action initiated under this chapter or any other chapter in which a child or medical support obligation may be established based upon a prior determination of paternity, a party wishes to contest the paternity of the child or children involved, all of the following apply:

a. (1) If the prior determination of paternity is based on an affidavit of paternity filed pursuant to section 252A.3A, or a court or administrative order entered in this state, or by operation of law when the mother and established father are or were married to each other, the provisions of section 600B.41A apply.

(2) If following the proceedings under section 600B.41A the court determines that the prior determination of paternity should not be overcome, and that the established father has a duty to provide support, the court shall enter an order establishing the monthly child support payment and the amount of the support debt accrued and accruing pursuant to subsection 4, or the medical support obligation pursuant to chapter 252E, or both.

b. If a determination of paternity is based on an administrative or court order or other means pursuant to the laws of a foreign jurisdiction, any action to overcome the prior determination of paternity shall be filed in that jurisdiction. Unless a stay of the action initiated in this state to establish child or medical support is requested and granted by the court, pending a resolution of the contested paternity issue by the foreign jurisdiction, the action shall proceed.

c. Notwithstanding paragraph "a", in a pending dissolution action under this chapter, a prior determination of paternity by operation of law through the marriage of the established father and mother of the child may be overcome under this chapter if the following conditions are met:

(1) The established father and mother of the child file a written statement with the court that both parties agree that the established father is not the biological father of the child.

(2) The court finds that it is in the best interest of the child to overcome the established paternity. In determining the best interest of the child, the court shall consider the criteria provided in section 600B.41A, subsection 3, paragraph "g".

If the court overcomes a prior determination of paternity, the previously established father shall be relieved of support obligations as specified in section 600B.41A, subsection 4. In any action to overcome paternity other than through a pending dissolution action, the provisions of section 600B.41A apply. Overcoming paternity under this paragraph does not bar subsequent actions to establish paternity if it is subsequently determined that the written statement attesting that the established father is not the biological father of the child may have been submitted

erroneously, and that the person previously determined not to be the child's father during the dissolution action may actually be the child's biological father.

4B. If an action to overcome paternity is brought pursuant to subsection 4A, paragraph "c", the court shall appoint a guardian ad litem for the child for the pendency of the proceedings.

5. The court may protect and promote the best interests of a minor child by setting aside a portion of the child support which either party is ordered to pay in a separate fund or conservatorship for the support, education and welfare of the child.

6. The court may provide for joint custody of the children by the parties pursuant to section 598.41. All orders relating to custody of a child are subject to chapter 598A.

7. Orders made pursuant to this section need mention only those factors relevant to the particular case for which the orders are made but shall contain the names, birth dates, addresses, and counties of residence of the petitioner and respondent.

8. The court may subsequently modify orders made under this section when there is a substantial change in circumstances. In determining whether there is a substantial change in circumstances, the court shall consider the following:

a. Changes in the employment, earning capacity, income or resources of a party.

b. Receipt by a party of an inheritance, pension or other gift.

c. Changes in the medical expenses of a party.

d. Changes in the number or needs of dependents of a party.

e. Changes in the physical, mental, or emotional health of a party.

f. Changes in the residence of a party.

g. Remarriage of a party.

h. Possible support of a party by another person.

i. Changes in the physical, emotional or educational needs of a child whose support is governed by the order.

j. Contempt by a party of existing orders of court.

k. Other factors the court determines to be relevant in an individual case.

A modification of a support order entered under chapter 234, 252A, 252C, 600B, this chapter, or any other support chapter or proceeding between parties to the order is void unless the modification is approved by the court, after proper notice and opportunity to be heard is given to all parties to the order, and entered as an order of the court. If support payments have been assigned to the department of human services pursuant to section 234.39, 239.3, or 252E.11, the department shall be considered a party to the support order. Modifications of orders pertaining to child custody shall be made pursuant to chapter 598A. If the petition for a modification of an order pertaining to child custody asks either for joint custody or that joint custody be modified to an award of sole custody, the modification, if any, shall be made pursuant to section 598.41.

Judgments for child support or child support awards entered pursuant to this chapter, chapter 234, 252A, 252C, 252F, 600B, or any other chapter of the Code which are subject to a modification proceeding may be retroactively modified only from the date the notice of the pending petition for modification is served on the opposing party.

The periodic due date established under a prior order for payment of child support shall not be changed in any modified order under this section, unless the court determines that good cause exists to change the periodic due date. If the court determines that good cause exists, the court shall include the rationale for the change in the modified order and shall address the issue of reconciliation of any payments due or made under a prior order which would result in payment of the child support obligation under both the prior and the modified orders.

9. Notwithstanding subsection 8, a substantial change of circumstances exists when the court order for child support varies by ten percent or more from the amount which would be due pursuant to the most current child support guidelines established pursuant to subsection 4 or the obligor has access to a health benefit plan, the current order for support does not contain provisions for medical support, and the dependents are not covered by a health benefit plan provided by the obligee, excluding coverage pursuant to chapter 249A or a comparable statute of a foreign jurisdiction.

This basis for modification is applicable to petitions filed on or after July 1, 1992, notwithstanding whether the guidelines prescribed by subsection 4 were used in establishing the current amount of support. Upon application for a modification of an order for child support for which services are being received pursuant to chapter 252B, the court shall set the amount of child support based upon the most current child support guidelines established pursuant to subsection 4, including provisions for medical support pursuant to chapter 252E. The child support recovery unit shall, in submitting an application for modification or adjustment of an order for support, employ additional criteria and procedures as provided in chapter 252H and as established by rule.

10. Notwithstanding any other provision of law to the contrary, when an application for modification or adjustment of support is submitted by the child support recovery unit, the sole issues which may be considered by the court in that action are the application of the guidelines in establishing the amount of support pursuant to section 598.21, subsection 4, and provision for medical support under chapter 252E. Issues related to custody, visitation, or other provisions unrelated to support shall be considered only under a separate application for modification.

11. If the court orders a transfer of title to real property, the clerk of court shall issue a certificate under chapter 558 relative to each parcel of real estate affected by the order and immediately deliver the certificate for recording to the county recorder of the county in which the real estate is located. Any fees assessed shall be included as part of the court

costs. The county recorder shall deliver the certificates to the county auditor as provided in section 558.58, subsection 1.

Property divisions made under this chapter are not subject to modification.

95 Acts, ch 52, §8; 95 Acts, ch 115, §11, 12
 Applicability of 1994 amendments adding subsections 4A and 4B and amending subsection 8; see 94 Acts, ch 1171, §52 and 95 Acts, ch 67, §50 and 54

Subsection 4, NEW paragraph e
 Subsection 4A, paragraph c amended
 Subsection 8, NEW unnumbered paragraph 4

598.41 Custody of children.

1. a. The court, insofar as is reasonable and in the best interest of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents after the parents have separated or dissolved the marriage, and which will encourage parents to share the rights and responsibilities of raising the child unless direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result from such contact with one parent.

b. Notwithstanding paragraph "a", if the court finds that a history of domestic abuse exists, a rebuttable presumption against the awarding of joint custody exists.

c. The court shall consider the denial by one parent of the child's opportunity for maximum continuing contact with the other parent, without just cause, a significant factor in determining the proper custody arrangement. Just cause may include a determination by the court pursuant to subsection 3, paragraph "j", that a history of domestic abuse exists between the parents.

d. If a history of domestic abuse exists as determined by a court pursuant to subsection 3, paragraph "j", and if a parent who is a victim of such domestic abuse relocates or is absent from the home based upon the fear of or actual acts or threats of domestic abuse perpetrated by the other parent, the court shall not consider the relocation or absence of that parent as a factor against that parent in the awarding of custody or visitation.

e. Unless otherwise ordered by the court in the custody decree, both parents shall have legal access to information concerning the child, including but not limited to medical, educational and law enforcement records.

2. a. On the application of either parent, the court shall consider granting joint custody in cases where the parents do not agree to joint custody.

b. If the court does not grant joint custody under this subsection, the court shall cite clear and convincing evidence, pursuant to the factors in subsection 3, that joint custody is unreasonable and not in the best interest of the child to the extent that the legal custodial relationship between the child and a parent should be severed.

c. A finding by the court that a history of domestic abuse exists, as specified in subsection 3, paragraph "j", which is not rebutted, shall outweigh consider-

ation of any other factor specified in subsection 3 in the determination of the awarding of custody under this subsection.

d. Before ruling upon the joint custody petition in these cases, unless the court determines that a history of domestic abuse exists as specified in subsection 3, paragraph "j", or unless the court determines that direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result, the court may require the parties to participate in custody mediation to determine whether joint custody is in the best interest of the child. The court may require the child's participation in the mediation insofar as the court determines the child's participation is advisable.

e. The costs of custody mediation shall be paid in full or in part by the parties and taxed as court costs.

3. In considering what custody arrangement under subsection 2 is in the best interest of the minor child, the court shall consider the following factors:

a. Whether each parent would be a suitable custodian for the child.

b. Whether the psychological and emotional needs and development of the child will suffer due to lack of active contact with and attention from both parents.

c. Whether the parents can communicate with each other regarding the child's needs.

d. Whether both parents have actively cared for the child before and since the separation.

e. Whether each parent can support the other parent's relationship with the child.

f. Whether the custody arrangement is in accord with the child's wishes or whether the child has strong opposition, taking into consideration the child's age and maturity.

g. Whether one or both the parents agree or are opposed to joint custody.

h. The geographic proximity of the parents.

i. Whether the safety of the child, other children, or the other parent will be jeopardized by the awarding of joint custody or by unsupervised or unrestricted visitation.

j. Whether a history of domestic abuse, as defined in section 236.2, exists. In determining whether a history of domestic abuse exists, the court's consideration shall include, but is not limited to, commencement of an action pursuant to section 236.3, the issuance of a protective order against the parent or

the issuance of a court order or consent agreement pursuant to section 236.5, the issuance of an emergency order pursuant to section 236.6, the holding of a parent in contempt pursuant to section 236.8, the response of a peace officer to the scene of alleged domestic abuse or the arrest of a parent following response to a report of alleged domestic abuse, or a conviction for domestic abuse assault pursuant to section 708.2A.

4. Subsection 3 shall not apply when parents agree to joint custody.

5. Joint legal custody does not require joint physical care. When the court determines such action would be in the best interest of the child, physical care may be given to one joint custodial parent and not to the other. If one joint custodial parent is awarded physical care, the court shall hold that parent responsible for providing for the best interest of the child. However, physical care given to one parent does not affect the other parent's rights and responsibilities as a legal custodian of the child. Rights and responsibilities as legal custodian of the child include, but are not limited to, equal participation in decisions affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction.

6. When the parent awarded custody or physical care of the child cannot act as custodian or caretaker because the parent has died or has been judicially adjudged incompetent, the court shall award custody including physical care of the child to the surviving parent unless the court finds that such an award is not in the child's best interest.

7. If an application for modification of a decree or a petition for modification of an order is filed, based upon differences between the parents regarding the custody arrangement established under the decree or order, unless the court determines that a history of domestic abuse exists as specified in subsection 3, paragraph "j", or unless the court determines that direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result, the court may require the parents to participate in mediation to attempt to resolve the differences between the parents.

95 Acts, ch 182, §22-24; 95 Acts, ch 183, §2
See Code editor's note to §13B.8
Subsections 1 and 2 amended
Subsection 3, NEW paragraph j
NEW subsection 7

CHAPTER 600A

TERMINATION OF PARENTAL RIGHTS

600A.5 Petition for termination.

1. The following persons may petition a juvenile court for termination of parental rights under this chapter if the child of the parent-child relationship is born or expected to be born within one hundred eighty days of the date of petition filing:

a. A parent or prospective parent of the parent-child relationship.

b. A custodian or guardian of the child.

2. A petition for termination of parental rights shall be filed with the juvenile court in the county in which the guardian or custodian of the child resides

or the child, the biological mother or the pregnant woman is domiciled. If a juvenile court has made an order pertaining to a minor child under chapter 232, division III, and that order is still in force, the termination proceedings shall be conducted pursuant to the provisions of chapter 232, division IV.

3. A petition for termination of parental rights shall include the following:

a. The legal name, age and domicile, if any, of the child.

b. The names, residences, and domicile of any:

- (1) Living parents of the child.
- (2) Guardian of the child.
- (3) Custodian of the child.
- (4) Guardian ad litem of the child.
- (5) Petitioner.
- (6) Person standing in the place of the parents of the child.

c. A plain statement of the facts and grounds in section 600A.8 which indicate that the parent-child relationship should be terminated.

d. A plain statement explaining why the petitioner does not know any of the information required under paragraphs "a" and "b" of this subsection.

e. The signature and verification of the petitioner.

95 Acts, ch 49, §21; 95 Acts, ch 182, §25

See Code editor's note

Subsection 3, paragraph c amended

600A.8 Grounds for termination.

The juvenile court shall base its findings and order under section 600A.9 on clear and convincing proof. The following shall be, either separately or jointly, grounds for ordering termination of parental rights:

1. A parent has signed a release of custody pur-

suant to section 600A.4 and the release has not been revoked.

2. A parent has petitioned for the parent's termination of parental rights pursuant to section 600A.5.

3. A parent has abandoned the child.

4. A parent has been ordered to contribute to the support of the child or financially aid in the child's birth and has failed to do so without good cause.

5. A parent does not object to the termination after having been given proper notice and the opportunity to object.

6. A parent does not object to the termination although every reasonable effort has been made to identify, locate and give notice to that parent as required in section 600A.6.

7. An adoptive parent requests termination of parental rights and the parent-child relationship based upon a showing that the adoption was fraudulently induced in accordance with the procedures set out in section 600A.9, subsection 3.

8. Both of the following circumstances apply to a parent:

a. The parent has been determined to be a chronic substance abuser as defined in section 125.2 and the parent has committed a second or subsequent domestic abuse assault pursuant to section 708.2A.

b. The parent has abducted the child, has improperly removed the child from the physical custody of the person entitled to custody without the consent of that person, or has improperly retained the child after a visit or other temporary relinquishment of physical custody.

95 Acts, ch 182, §26

NEW subsection 8

CHAPTER 600B

PATERNITY AND OBLIGATION FOR SUPPORT

600B.40 Custody and visitation.

The mother of a child born out of wedlock whose paternity has not been acknowledged and who has not been adopted has sole custody of the child unless the court orders otherwise. If a judgment of paternity is entered, the father may petition for rights of visitation or custody in an equity proceeding separate from any action to establish paternity.

In determining the visitation or custody arrangements of a child born out of wedlock, if a judgment of paternity is entered and the mother of the child has not been awarded sole custody, section 598.41 shall apply to the determination, as applicable, and the court shall consider the factors specified in section 598.41, subsection 3, including but not limited to the factor related to a parent's history of domestic abuse.

95 Acts, ch 182, §27

NEW unnumbered paragraph 2

600B.41 Blood and genetic tests.

1. In a proceeding to establish paternity in law or in equity the court may on its own motion, and upon request of a party shall, require the child, mother, and alleged father to submit to blood or genetic tests.

2. If a blood or genetic test is required, the court shall direct that inherited characteristics be determined by appropriate testing procedures, and shall appoint an expert qualified as an examiner of genetic markers to analyze and interpret the results and to report to the court.

3. Verified documentation of the chain of custody of the blood or genetic specimen is competent evidence to establish the chain of custody. The testimony of the court-appointed expert at trial is not required.

4. A verified expert's report shall be admitted at trial.

5. The results of the tests shall have the following effects:

a. Test results which show a statistical probability of paternity are admissible. To challenge the test results, a party shall file a notice of the challenge, with the court, within twenty days of the filing of the expert's report with the clerk of the district court, or, if a court hearing is scheduled to resolve the issue of paternity, no later than thirty days before the original court hearing date.

(1) Any subsequent rescheduling or continuances of the originally scheduled hearing shall not extend the original time frame.

(2) Any challenge filed after the time frame is not acceptable or admissible by the court.

(3) If a challenge is not timely filed, the test results shall be admitted as evidence of paternity without the need of additional proof of authenticity or accuracy.

b. If the expert concludes that the test results show that the alleged father is not excluded and that the probability of the alleged father's paternity is ninety-five percent or higher, there shall be a rebuttable presumption that the alleged father is the father, and this evidence must be admitted.

(1) To challenge this presumption of paternity, a party must file a notice of the challenge with the court within the time frames prescribed in paragraph "a".

(2) The party challenging the presumption of the alleged father's paternity has the burden of proving

that the alleged father is not the father of the child.

(3) The presumption of paternity can be rebutted only by clear and convincing evidence.

c. If the expert concludes that the test results show that the alleged father is not excluded and that the probability of the alleged father's paternity is less than ninety-five percent, test results shall be weighed along with other evidence of the alleged father's paternity. To challenge the test results, a party must file a notice of the challenge with the court within the time frames prescribed in paragraph "a".

6. If the results of the tests or the expert's analysis of inherited characteristics is disputed in a timely fashion, the court, upon reasonable request of a party, shall order that an additional test be made by the same laboratory or an independent laboratory at the expense of the party requesting additional testing. When a subsequent test is conducted, all time frames prescribed in this chapter associated with blood or genetic tests shall apply to the most recently completed test.

7. All costs shall be paid by the parties or parents in proportions and at times determined by the court, except as otherwise provided pursuant to section 600B.41A.

95 Acts, ch 52, §9
Subsection 2 amended

CHAPTER 602

JUDICIAL DEPARTMENT

Modernization of vital statistics records system effective July 1, 1997;
cooperation during transition period; 95 Acts, ch 124, §25, 26
See 95 Acts, ch 124, §22-26 for future amendments to ch 602 relating to
transfer of vital statistics duties from clerk of the district court
effective July 1, 1997

602.1203 Personnel conferences.

The chief justice may order conferences of judicial officers or court employees on matters relating to the administration of justice or the affairs of the department. For judges and other court employees who handle cases involving children and family law, the chief justice shall require regular training concerning mental or emotional disorders which may afflict children and the impact children with such disorders have upon their families.

95 Acts, ch 182, §28
Section amended

602.1302 State funding.

1. Except as otherwise provided by sections 602.1303 and 602.1304 or other applicable law, the expenses of operating and maintaining the department shall be paid out of the general fund of the state from funds appropriated by the general assembly for the department. State funding shall be phased in as provided in section 602.11101.

2. The supreme court may accept federal funds to

be used in the operation of the department, but shall not expend any of these funds except pursuant to appropriation of the funds by the general assembly.

3. A revolving fund is created in the state treasury for the payment of jury and witness fees and mileage by the department. The department shall deposit any reimbursements to the state for the payment of jury and witness fees and mileage in the revolving fund. Notwithstanding section 8.33, unencumbered and unobligated receipts in the revolving fund at the end of a fiscal year do not revert to the general fund of the state. The department shall on or before February 1 file a financial accounting of the moneys in the revolving fund with the legislative fiscal bureau. The accounting shall include an estimate of disbursements from the revolving fund for the remainder of the fiscal year and for the next fiscal year.

4. The department shall reimburse counties for the costs of witness and mileage fees and for attorney fees paid pursuant to section 232.141, subsection 1.

95 Acts, ch 207, §23
Subsection 1 amended

602.1304 Revenues — enhanced court collections fund.

1. Except as provided in article 8 and subsection 2 of this section, all fees and other revenues collected by judicial officers and court employees shall be paid into the general fund of the state.

2. *a.* The enhanced court collections fund is created in the state treasury under the authority of the supreme court. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. Notwithstanding section 8.33, moneys in the fund shall not revert to the general fund, unless and to the extent the total amount of moneys deposited into the fund in a fiscal year would exceed the maximum annual deposit amount established for the collections fund by the general assembly. The initial maximum annual deposit amount for a fiscal year is four million dollars. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the collections fund shall remain in the collections fund and any interest and earnings shall be in addition to the maximum annual deposit amount.

b. For each fiscal year, a judicial collection estimate for that fiscal year shall be equally and proportionally divided into a quarterly amount. The judicial collection estimate shall be calculated by using the state revenue estimating conference estimate made by December 15 pursuant to section 8.22A, subsection 3, of the total amount of fines, fees, civil penalties, costs, surcharges, and other revenues collected by judicial officers and court employees for deposit into the general fund of the state. The revenue estimating conference estimate shall be reduced by the maximum amounts allocated to the Iowa prison infrastructure fund pursuant to section 602.8108A, and the court technology fund pursuant to section 602.8108, and the remainder shall be the judicial collection estimate. In each quarter of a fiscal year, after revenues collected by judicial officers and court employees equal to that quarterly amount are deposited into the general fund of the state and after the required amount is deposited during the quarter into the Iowa prison infrastructure fund pursuant to section 602.8108A and into the court technology fund pursuant to section 602.8108, the director of revenue and finance shall deposit the remaining revenues for that quarter into the enhanced court collections fund in lieu of the general fund. However, after total deposits into the collections fund for the fiscal year are equal to the maximum deposit amount established for the collections fund, remaining revenues for that fiscal year shall be deposited into the general fund. If the revenue estimating conference agrees to a different estimate at a later meeting which projects a lesser amount of revenue than the initial estimate amount used to calculate the judicial collection estimate, the director of revenue and finance shall recalculate the judicial collection estimate accordingly. If the revenue estimating conference agrees to a different estimate at a later meeting which projects

a greater amount of revenue than the initial estimate amount used to calculate the judicial collection estimate, the director of revenue and finance shall recalculate the judicial collection estimate accordingly but only to the extent that the greater amount is due to an increase in the fines, fees, civil penalties, costs, surcharges, or other revenues allowed by law to be collected by judicial officers and court employees.

c. Moneys in the collections fund shall be used by the judicial department for the Iowa court information system.

95 Acts, ch 207, §24

For provisions concerning the deposit of certain delinquent amounts collected in criminal proceedings in the revolving fund established under §602.1302, see §909.10

Restrictions on use of funds for 1995-1996 fiscal year; 95 Acts, ch 207, §9
Section amended

602.6201 Office of district judge — apportionment.

1. District judges shall be nominated and appointed and shall stand for retention in office as provided in chapter 46. District judges shall qualify for office as provided in chapter 63.

2. A district judge must be a resident of the judicial election district in which appointed and retained. Subject to the provision for reassignment of judges under section 602.6108, a district judge shall serve in the district of the judge's residence while in office, regardless of the number of judgeships to which the district is entitled under subsection 3.

3. *a.* A judicial election district containing a city of fifty thousand or more population is entitled to the number of judgeships equal to the average, rounded to the nearest whole number, of the following two quotients, each rounded to the nearest hundredth:

(1) The combined civil and criminal filings in the election district divided by five hundred fifty.

(2) The election district's population divided by forty thousand.

However, the seat of government is entitled to one additional judgeship.

b. All other judicial election districts are entitled to the number of judgeships equal to the average, rounded to the nearest whole number, of the following two quotients, each rounded to the nearest hundredth:

(1) The combined civil and criminal filings in the election district divided by four hundred fifty.

(2) The election district's population divided by forty thousand.

However, the judicial election district in which the Iowa state penitentiary is located is entitled to one additional judgeship.

c. The filings included in the determinations to be made under this subsection shall not include small claims or nonindictable misdemeanors, and shall not include either civil actions for money judgment where the amount in controversy does not exceed five thousand dollars or indictable misdemeanors or felony violations of section 321J.2, which were assigned to district associate judges and magistrates as shown on their administrative reports, but shall in-

clude appeals from decisions of magistrates, district associate judges, and district judges sitting as magistrates. The figures on filings shall be the average for the latest available previous three-year period and when current census figures on population are not available, figures shall be taken from the Iowa department of public health computations.

4. For purposes of this section, a vacancy means the death, resignation, retirement, or removal of a district judge, or the failure of a district judge to be retained in office at the judicial election, or an increase in judgeships under this section.

5. In those judicial election districts having more district judges than the number of judgeships specified by the formula in subsection 3, vacancies shall not be filled.

6. In those judicial election districts having fewer or the same number of district judges as the number of judgeships specified by the formula in subsection 3, vacancies in the number of district judges shall be filled as they occur.

7. In those judicial districts that contain more than one judicial election district, a vacancy in a judicial election district shall not be filled if the total number of district judges in all judicial election districts within the judicial district equals or exceeds the aggregate number of judgeships to which all of the judicial election districts of the judicial district are authorized.

8. Vacancies shall not be filled in a judicial election district which becomes entitled to fewer judgeships under subsection 3, but an incumbent district judge shall not be removed from office because of a reduction in the number of authorized judgeships.

9. During February of each year, and at other times as appropriate, the state court administrator shall make the determinations required under this section, and shall notify the appropriate nominating commissions and the governor of appointments that are required.

10. Notwithstanding the formula for determining the number of judgeships in this section, the number of district judges shall not exceed one hundred eight during the period commencing July 1, 1995.

95 Acts, ch 207, §25

For distribution of additional district court judges, see 95 Acts, ch 207,

§7

Subsection 10 amended

602.6301 Number and apportionment of district associate judges.

There shall be one district associate judge in counties having a population, according to the most recent federal decennial census, of more than thirty-five thousand and less than eighty thousand; two in counties having a population of eighty thousand or more and less than one hundred twenty-five thousand; three in counties having a population of one hundred twenty-five thousand or more and less than two hundred thousand; four in counties having a population of two hundred thousand or more and less than two hundred thirty-five thousand; five in counties having a population of two hundred thirty-five thou-

sand or more and less than two hundred seventy thousand; six in counties having a population of two hundred seventy thousand or more and less than three hundred five thousand; and seven in counties having a population of three hundred five thousand or more. If the formula provided in this section results in the allocation of an additional district associate judgeship to a county, implementation of the allocation shall be subject to prior approval of the supreme court and availability of funds to the judicial department. A district associate judge appointed pursuant to section 602.6302 or 602.6303 shall not be counted for purposes of this section.

For additional district associate judge in certain counties notwithstanding this section, see 95 Acts, ch 207, §7

Section not amended; footnote added

602.8102 General duties.

The clerk shall:

1. Keep the office of the clerk at the county seat.
2. Attend sessions of the district court.
3. Keep the records, papers, and seal, and record the proceedings of the district court as provided by law under the direction of the chief judge of the judicial district.

4. Upon the death of a judge or magistrate of the district court, give written notice to the department of management and the department of revenue and finance of the date of death. The clerk shall also give written notice of the death of a justice of the supreme court, a judge of the court of appeals, or a judge or magistrate of the district court who resides in the clerk's county to the state commissioner of elections, as provided in section 46.12.

5. When money in the amount of five hundred dollars or more is paid to the clerk to be paid to another person and the money is not disbursed within thirty days, notify the person who is entitled to the money or for whose account the money is paid or the attorney of record of the person. The notice shall be given by certified mail within forty days of the receipt of the money to the last known address of the person or the person's attorney and a memorandum of the notice shall be made in the proper record. If the notice is not given, the clerk and the clerk's sureties are liable for interest at the rate specified in section 535.2, subsection 1 on the money from the date of receipt to the date that the money is paid to the person entitled to it or the person's attorney.

6. On each process issued, indicate the date that it is issued, the clerk's name who issued it, and the seal of the court.

7. Upon return of an original notice to the clerk's office, enter in the appearance or combination docket information to show which parties have been served the notice and the manner and time of service.

8. When entering a lien or indexing an action affecting real estate in the clerk's office, enter the year, month, day, hour, and minute when the entry is made. The clerk shall mail a copy of a mechanic's lien to the owner of the building, land, or improvement which is charged with the lien as provided in section 572.8.

9. Enter in the appearance docket a memorandum of the date of filing of all petitions, demurrers, answers, motions, or papers of any other description in the cause. A pleading of any description is considered filed when the clerk entered the date the pleading was received on the pleading and the pleading shall not be taken from the clerk's office until the memorandum is made. The memorandum shall be made before the end of the next working day. Thereafter, when a demurrer or motion is sustained or overruled, a pleading is made or amended, or the trial of the cause, rendition of the verdict, entry of judgment, issuance of execution, or any other act is done in the progress of the cause, a similar memorandum shall be made of the action, including the date of action and the number of the book and page of the record where the entry is made. The appearance docket is an index of each suit from its commencement to its conclusion.

10. When title to real estate is finally established in a person by a judgment or decree of the district court or by decision of an appellate court or when the title to real estate is changed by judgment, decree, will, proceeding, or order in probate, certify the final decree, judgment, or decision under seal of the court to the auditor of the county in which the real estate is located.

11. Refund amounts less than one dollar only upon written application.

12. At the order of a justice of the supreme court, docket without fee any civil or criminal case transferred from a military district under martial law as provided in section 29A.45.

13. Carry out duties as a member of a nominations appeal commission as provided in section 44.7.

14. Maintain a bar admission list as provided in section 46.8.

15. Notify the county commissioner of registration and the state registrar of voters of persons seventeen and one-half years of age and older who have been convicted of a felony or who have been legally declared to be mentally incompetent.

16. Reserved.

17. Reserved.

18. Reserved.

19. Keep a book of the record of official bonds and record the official bonds of magistrates as provided in section 64.24.

20. Carry out duties relating to proceedings for the removal of a public officer as provided in sections 66.4 and 66.17.

21. Reserved.

22. Reserved.

23. Carry out duties relating to enforcing orders of the employment appeal board as provided in section 88.9, subsection 2.

24. Certify the imposition of a mulct tax against property creating a public nuisance to the auditor as provided in section 99.28.

25. Carry out duties relating to the judicial review of orders of the employment appeal board as provided in section 89A.10, subsection 2.

26. With sufficient surety, approve an appeal

bond for judicial review of an order or action of the department of natural resources relating to dams and spillways as provided in section 464A.8.

27. Docket an appeal from the fence viewer's decision or order as provided in section 359A.23.

28. Certify to the recorder the fact that a judgment has been rendered upon an appeal of a fence viewer's order as provided in section 359A.24.

29. Reserved.

30. Approve bond sureties and enter in the lien index the undertakings of bonds for abatement relating to the illegal manufacture, sale, or consumption of alcoholic liquors as provided in sections 123.76, 123.79, and 123.80.

31. Reserved.

32. Carry out duties as county registrar of vital statistics as provided in chapter 144.

33. Furnish to the Iowa department of public health a certified copy of a judgment suspending or revoking a professional license as provided in section 147.66.

34. Reserved.

35. Send notice of the conviction, judgment, and sentence of a person violating the uniform controlled substances laws to the state board or officer who issued a license or registered the person to practice a profession or to conduct business as provided in section 124.412.

36. Carry out duties relating to the commitment of a mentally retarded person as provided in sections 222.37 through 222.40.

37. Keep a separate docket of proceedings of cases relating to the mentally retarded as provided in section 222.57.

38. Order the commitment of a voluntary public patient to the state psychiatric hospital under the circumstances provided in section 225.16.

39. Refer persons applying for voluntary admission to a community mental health center for a preliminary diagnostic evaluation as provided in section 225C.16, subsection 2.

40. Reserved.

41. Carry out duties relating to the involuntary commitment of mentally impaired persons as provided in chapter 229.

42. Serve as clerk of the juvenile court and carry out duties as provided in chapter 232 and article 7.

43. Submit to the director of the division of child and family services of the department of human services a duplicate of the findings of the district court related to adoptions as provided in section 235.3, subsection 7.

44. Forward to the superintendent of each correctional institution a copy of the sheriff's certification concerning the number of days that have been credited toward completion of an inmate's sentence as provided in section 903A.5.

45. Reserved.

46. Carry out duties relating to reprieves, pardons, commutations, remission of fines and forfeitures, and restoration of citizenship as provided in sections 914.5 and 914.6.

47. Record support payments made pursuant to an order entered under chapter 252A, 252F, 598, or 600B, or under a comparable statute of a foreign jurisdiction and through setoff of a state or federal income tax refund or rebate, as if the payments were received and disbursed by the clerk; forward support payments received under section 252A.6 to the department of human services and furnish copies of orders and decrees awarding support to parties receiving welfare assistance as provided in section 252A.13.

47A. Accept a check, share draft, draft, or written order on a bank, savings and loan association, credit union, corporation, or person as payment of a support obligation which is payable to the clerk, in accordance with procedures established by the clerk to assure that such negotiable instruments will not be dishonored. The friend of court may perform the clerk's responsibilities under this subsection.

48. Carry out duties relating to the provision of medical care and treatment for indigent persons as provided in chapter 255.

49. Enter a judgment based on the transcript of an appeal to the state board of education against the party liable for payment of costs as provided in section 290.4.

50. Certify the final order of the district court upon appeal of an assessment within a secondary road assessment district to the auditor as provided in section 311.24.

50A. Assist the department of transportation in suspending, pursuant to section 321.210A, the motor vehicle licenses of persons who fail to timely pay criminal fines or penalties, surcharges, or court costs related to the violation of a law regulating the operation of a motor vehicle.

51. Forward to the department of transportation a copy of the record of each conviction or forfeiture of bail of a person charged with the violation of the laws regulating the operation of vehicles on public roads as provided in sections 321J.2 and 321.491.

52. Reserved.

53. If a person fails to satisfy a judgment relating to motor vehicle financial responsibility within sixty days, forward to the director of the department of transportation a certified copy of the judgment as provided in section 321A.12.

54. Approve a bond of a surety company or a bond with at least two individual sureties owning real estate in this state as proof of financial responsibility as provided in section 321A.24.

55. Carry out duties under the Iowa motor vehicle dealers licensing Act as provided in sections 322.10 and 322.24.

56. Carry out duties relating to the enforcement of motor fuel tax laws as provided in sections 452A.66 and 452A.67.

57. Carry out duties relating to the platting of land as provided in chapter 354.

58. Upon order of the director of revenue and finance, issue a commission for the taking of depositions as provided in section 421.17, subsection 8.

58A. Assist the department of revenue and finance in setting off against debtors' income tax refunds or rebates under section 421.17, subsection 25, debts which are due, owing, and payable to the clerk of the district court as criminal fines, civil penalties, surcharges, or court costs.

59. Mail to the director of revenue and finance a copy of a court order relieving an executor or administrator from making an income tax report on an estate as provided in section 422.23.

60. With acceptable sureties, approve the bond of a petitioner for a tax appeal as provided in section 422.29, subsection 2.

61. Certify the final decision of the district court in an appeal of the tax assessments as provided in section 441.39. Costs of the appeal to be assessed against the board of review or a taxing body shall be certified to the treasurer as provided in section 441.40.

62. Certify a final order of the district court relating to the apportionment of tax receipts to the auditor as provided in section 449.7.

63. Carry out duties relating to the inheritance tax as provided in chapter 450.

64. Deposit funds held by the clerk in an approved depository as provided in section 12C.1.

65. Carry out duties relating to appeals and certification of costs relating to levee and drainage districts as provided in sections 468.86 through 468.95.

66. Carry out duties relating to the condemnation of land as provided in chapter 6B.

67. Forward civil penalties collected for violations relating to the siting of electric power generators to the treasurer of state as provided in section 476A.14, subsection 1.

68. Certify a copy of a decree of dissolution of a business corporation to the secretary of state as provided in section 490.1433.

69. With acceptable sureties, approve the bond of a petitioner filing an appeal for review of an order of the commissioner of insurance as provided in section 502.606 or 507A.7.

70. Certify a copy of a decree of dissolution of a nonprofit corporation to the secretary of state and the recorder in the county in which the corporation is located as provided in section 504A.62.

71. Carry out duties relating to the enforcement of decrees and orders of reciprocal states under the Iowa unauthorized insurers Act as provided in section 507A.11.

72. Certify copies of a decree of involuntary dissolution of a state bank to the secretary of state and the recorder of the county in which the bank is located as provided in section 524.1311, subsection 4.

73. Certify copies of a decree dissolving a credit union as provided in section 533.21, subsection 4.

74. Refuse to accept the filing of papers to institute legal action under the Iowa consumer credit code if proper venue is not adhered to as provided in section 537.5113.

75. Receive payment of money due to a person who is absent from the state if the address or location of the person is unknown as provided in section 538.5.

76. Carry out duties relating to the appointment of the department of agriculture and land stewardship as receiver for agricultural commodities on behalf of a warehouse operator whose license is suspended or revoked as provided in section 203C.3.

77. Reserved.

78. Certify an acknowledgment of a written instrument relating to real estate as provided in section 558.20.

79. Collect on behalf of, and pay to, the treasurer the fee for the transfer of real estate as provided in section 558.66.

80. With acceptable sureties, endorse a bond sufficient to settle a dispute between adjoining owners of a common wall as provided in section 563.11.

81. Carry out duties relating to cemeteries as provided in sections 566.4, 566.7, and 566.8.

82. Carry out duties relating to liens as provided in chapters 249A, 570, 571, 572, 574, 580, 581, 582, and 584.

83. Accept applications for and issue marriage licenses as provided in chapter 595.

84. Carry out duties relating to the dissolution of a marriage as provided in chapter 598.

85. Carry out duties relating to the custody of children as provided in chapter 598A.

86. Carry out duties relating to adoptions as provided in chapter 600.

87. Enter upon the clerk's records actions taken by the court at a location which is not the county seat as provided in section 602.6106.

88. Maintain a record of the name, address, and term of office of each member of the county magistrate appointing commission as provided in section 602.6501.

89. Certify to the state court administrator the names and addresses of the magistrates appointed by the county magistrate appointing commission as provided in section 602.6403.

90. Furnish an individual or centralized docket for the magistrates of the county as provided in section 602.6604.

91. Serve as an ex officio jury commissioner and notify appointive commissioners of their appointment as provided in sections 607A.9 and 607A.13.

92. Carry out duties relating to the selection of jurors as provided in chapter 607A.

93. Carry out duties relating to the revocation or suspension of an attorney's authority to practice law as provided in article 10 of this chapter.

94. File and index petitions affecting real estate as provided in sections 617.10 through 617.15.

95. Designate the newspapers in which the notices pertaining to the clerk's office shall be published as provided in section 618.7.

96. With acceptable surety, approve a bond of the plaintiff in an action for the payment of costs which may be adjudged against the plaintiff as provided in section 621.1.

97. Issue subpoenas for witnesses as provided in section 622.63.

98. Carry out duties relating to trials and judgments

as provided in sections 624.8 through 624.20 and 624.37.

99. Collect jury fees and court reporter fees as required by chapter 625.

100. Reserved.

101. Carry out duties relating to executions as provided in chapter 626.

102. Carry out duties relating to the redemption of property as provided in sections 628.13, 628.18, and 628.20.

103. Record statements of expenditures made by the holder of a sheriff's sale certificate in the encumbrance book and lien index as provided in section 629.3.

104. Carry out duties relating to small claim actions as provided in chapter 631.

105. Carry out duties of the clerk of the probate court as provided in chapter 633.

105A. Provide written notice to all duly appointed guardians and conservators of their liability as provided in sections 633.633A and 633.633B.

106. Carry out duties relating to the administration of small estates as provided in sections 635.1, 635.7, 635.9, and 635.11.

107. Carry out duties relating to the attachment of property as provided in chapter 639.

108. Carry out duties relating to garnishment as provided in chapter 642.

109. With acceptable surety, approve bonds of the plaintiff desiring immediate delivery of the property in an action of replevin as provided in sections 643.7 and 643.12.

110. Carry out duties relating to the disposition of lost property as provided in chapter 556F.

111. Carry out duties relating to the recovery of real property as provided in section 646.23.

112. Endorse the court's approval of a restored record as provided in section 647.3.

113. When a judgment of foreclosure is entered, file with the recorder an instrument acknowledging the foreclosure and the date of decree and upon payment of the judgment, file an instrument with the recorder acknowledging the satisfaction as provided in sections 655.4 and 655.5.

114. Carry out duties relating to the issuance of a writ of habeas corpus as provided in sections 663.9, 663.43, and 663.44.

115. Accept and docket an application for post-conviction review of a conviction as provided in section 822.3.

116. Report all fines, forfeited recognizances, penalties, and forfeitures as provided in section 602.8106, subsection 4, and section 666.6.

117. Issue a warrant for the seizure of a boat or raft as provided in section 667.2.

118. Carry out duties relating to the changing of a person's name as provided in chapter 674.

119. Notify the state registrar of vital statistics of a judgment determining the paternity of a child as provided in section 600B.36.

120. Enter a judgment made by confession and issue an execution of the judgment as provided in section 676.4.

121. With acceptable surety, approve the bond of a receiver as provided in section 680.3.

122. Carry out duties relating to the assignment of property for the benefit of creditors as provided in chapter 681.

123. Carry out duties relating to the certification of surety companies and the investment of trust funds as provided in chapter 636.

124. Maintain a separate docket for petitions requesting that the record and evidence in a judicial review proceeding be closed as provided in section 692.5.

125. Furnish a disposition of each criminal complaint or information or juvenile delinquency petition, alleging a delinquent act which would be an aggravated misdemeanor or felony if committed by an adult, filed in the district or juvenile court to the department of public safety as provided in section 692.15.

126. Carry out duties relating to the issuance of warrants to persons who fail to appear to answer citations as provided in section 805.5.

127. Provide for a traffic and scheduled violations office for the district court and service the locked collection boxes at weigh stations as provided in section 805.7.

128. Issue a summons to corporations to answer an indictment as provided in section 807.5.

129. Carry out duties relating to the disposition of seized property as provided in chapter 809.

130. Docket undertakings of bail as liens on real estate and enter them upon the lien index as provided in section 811.4.

131. Hold the amount of forfeiture and judgment of bail in the clerk's office for sixty days as provided in section 811.6.

132. Carry out duties relating to appeals from the district court as provided in chapter 814.

133. Certify costs and fees payable by the state as provided in section 815.1.

134. Notify the director of the Iowa department of corrections of the commitment of a convicted person as provided in section 901.7.

135. Carry out duties relating to deferred judgments, probations, and restitution as provided in sections 907.4 and 907.8, and chapter 910.

136. Carry out duties relating to the impaneling and proceedings of the grand jury as provided in R.Cr.P. 3, Ia. Ct. Rules, 3d ed.

137. Issue subpoenas upon application of the prosecuting attorney and approval of the court as provided in R.Cr.P. 5, Ia. Ct. Rules, 3d ed.

138. Issue summons or warrants to defendants as provided in R.Cr.P. 7, Ia. Ct. Rules, 3d ed.

139. Carry out duties relating to the change of venue as provided in R.Cr.P. 10, Ia. Ct. Rules, 3d ed.

140. Issue blank subpoenas for witnesses at the request of the defendant as provided in R.Cr.P. 14, Ia. Ct. Rules, 3d ed.

141. Carry out duties relating to the entry of judgment as provided in R.Cr.P. 22, Ia. Ct. Rules, 3d ed.

142. Carry out duties relating to the execution of a judgment as provided in R.Cr.P. 24, Ia. Ct. Rules, 3d ed.

143. Carry out duties relating to the trial of simple misdemeanors as provided in R.Cr.P. 32 through 56, Ia. Ct. Rules, 3d ed.

144. Serve notice of an order of judgment entered as provided in R.C.P. 82, Ia. Ct. Rules, 3d ed.

145. If a party is ordered or permitted to plead further by the court, serve notice to attorneys of record as provided in R.C.P. 86, Ia. Ct. Rules, 3d ed.

146. Maintain a motion calendar as provided in R.C.P. 117, Ia. Ct. Rules, 3d ed.

147. Provide notice of a judgment, order, or decree as provided in R.C.P. 120, Ia. Ct. Rules, 3d ed.

148. Issue subpoenas as provided in R.C.P. 155, Ia. Ct. Rules, 3d ed.

149. Tax the costs of taking a deposition as provided in R.C.P. 157, Ia. Ct. Rules, 3d ed.

150. With acceptable sureties, approve a bond filed for change of venue under R.C.P. 167, Ia. Ct. Rules, 3d ed.

151. Transfer the papers relating to a case transferred to another court as provided in R.C.P. 173, Ia. Ct. Rules, 3d ed.

152. Maintain a trial certificate list as provided in R.C.P. 181.1, Ia. Ct. Rules, 3d ed.

153. Reserved.

154. Carry out duties relating to the impaneling of jurors as provided in R.C.P. 187 through 190, Ia. Ct. Rules, 3d ed.

155. Furnish a referee, auditor, or examiner with a copy of the order of appointment as provided in R.C.P. 207, Ia. Ct. Rules, 3d ed.

156. Mail notice of the filing of the referee's, auditor's, or examiner's report to the attorneys of record as provided in R.C.P. 214, Ia. Ct. Rules, 3d ed.

157. Carry out duties relating to the entry of judgments as provided in R.C.P. 223, 226, 227.1, 228, and 229, Ia. Ct. Rules, 3d ed.

158. Carry out duties relating to defaults and judgments on defaults as provided in R.C.P. 231, 232, and 233, Ia. Ct. Rules, 3d ed.

159. Notify the attorney of record if exhibits used in a case are to be destroyed as provided in R.C.P. 253.1, Ia. Ct. Rules, 3d ed.

160. Docket the request for a hearing on a sale of property as provided in R.C.P. 290, Ia. Ct. Rules, 3d ed.

161. With acceptable surety, approve the bond of a citizen commencing an action of quo warranto as provided in R.C.P. 300, Ia. Ct. Rules, 3d ed.

162. Carry out duties relating to the issuance of a writ of certiorari as provided in R.C.P. 306 through 319, Ia. Ct. Rules, 3d ed.

163. Carry out duties relating to the issuance of an injunction as provided in R.C.P. 320 through 330, Ia. Ct. Rules, 3d ed.

164. Carry out other duties as provided by law.

95 Acts, ch 67, §46; 95 Acts, ch 91, §3; 95 Acts, ch 143, §10; 95 Acts, ch 191, §26

See 95 Acts, ch 124, §22 and 24–26 for future amendment to this section relating to the transfer of vital statistics duties effective July 1, 1997

Subsections 44, 110, and 125 amended

Subsection 52 stricken

602.8105 Fees for civil cases and other services — collection and disposition.

1. The clerk of the district court shall collect the following fees:

a. For filing and docketing a petition, other than a modification of a dissolution decree to which a written stipulation is attached at the time of filing containing the agreement of the parties to the terms of modification, eighty dollars. In counties having a population of ninety-eight thousand or over, an additional five dollars shall be charged and collected to be known as the journal publication fee and used for the purposes provided for in section 618.13.

b. For filing and docketing an application for modification of a dissolution decree to which a written stipulation is attached at the time of filing containing the agreement of the parties to the terms of modification, twenty-five dollars.

c. For entering a final decree of dissolution of marriage, thirty dollars. It is the intent of the general assembly that the funds generated from the dissolution fees be appropriated and used for sexual assault and domestic violence centers.

d. For filing and docketing a small claims action, the amounts specified in section 631.6.

e. For an appeal from a judgment in small claims or for a writ of error, fifty dollars.

f. For a motion to show cause in a civil case, twenty-five dollars.

2. The clerk of the district court shall collect the following fees for miscellaneous services:

a. For filing an application for a license to marry, thirty dollars. For issuing an application for an order of the district court authorizing the issuance of a license to marry prior to the expiration of three days from the date of filing the application for the license, five dollars. The court shall authorize the issuance of a marriage license without the payment of any fees imposed by this paragraph upon a showing that the applicant is unable to pay the fees.

b. For filing, entering, and endorsing a mechanic's lien, ten dollars, and if a suit is brought, the fee is taxable as other costs in the action.

c. For filing and entering an agricultural supply dealer's lien and any other statutory lien, ten dollars.

d. For a certificate and seal, ten dollars. However, there shall be no charge for a certificate and seal to an application to procure a pension, bounty, or back pay for a soldier or other person.

e. For certifying a change in title of real estate, ten dollars.

f. Other fees provided by law.

3. The clerk of the district court shall pay to the treasurer of state all fees which have come into the clerk's possession and which are unclaimed pursuant to section 556.8 accompanied by a form prescribed by the treasurer. Claims for payment of the moneys must be filed pursuant to chapter 556.

95 Acts, ch 91, §4

See 95 Acts, ch 124, §23 and 24-26 for future amendment to this section relating to the transfer of vital statistics duties effective July 1, 1997

Subsection 1, NEW paragraph f

602.8106 Collection of fees in criminal cases and disposition of fees and fines.

1. The clerk of the district court shall collect the following fees:

a. Except as otherwise provided in paragraphs "b" and "c", for filing and docketing a criminal case to be paid by the county or city which has the duty to prosecute the criminal action, payable as provided in section 602.8109, thirty dollars. When judgment is rendered against the defendant, costs collected from the defendant shall be paid to the county or city which has the duty to prosecute the criminal action to the extent necessary for reimbursement for fees paid. However, the fees which are payable by the county to the clerk of the district court for services rendered in criminal actions prosecuted under state law and the court costs taxed in connection with the trial of those actions or appeals from the judgments in those actions are waived.

b. For filing and docketing of a complaint or information for a simple misdemeanor and a complaint or information for a nonscheduled simple misdemeanor under chapter 321, twenty-five dollars.

c. For filing and docketing a complaint or information or uniform citation and complaint for parking violations under sections 321.236, 321.239, 321.358, 321.360, and 321.361, one dollar, effective January 1, 1991. The court costs in cases of parking meter and overtime parking violations which are denied, and charged and collected pursuant to section 321.236, subsection 1, or pursuant to a uniform citation and complaint, are eight dollars per information or complaint or per uniform citation and complaint effective January 1, 1991.

d. The court costs in scheduled violation cases where a court appearance is required are twenty-five dollars.

e. For court costs in scheduled violation cases where a court appearance is not required, fifteen dollars.

f. For an appeal of a simple misdemeanor to the district court, fifty dollars.

2. The clerk of the district court shall remit ninety percent of all fines and forfeited bail to the city that was the plaintiff in any action, and shall provide that city with a statement showing the total number of cases, the total of all fines and forfeited bail collected, and the total of all cases dismissed. The remaining ten percent shall be submitted to the state court administrator.

3. The clerk of the district court shall remit all fines and forfeited bail for violation of a county ordinance, except an ordinance relating to vehicle speed or weight restrictions, to the county treasurer of the county that was the plaintiff in the action, and shall provide that county with a statement showing the total number of cases, the total of all fines and forfeited bail collected, and the total of all cases dismissed. However, if a county ordinance provides a penalty for a violation which is also penalized under state law, the fines and forfeited bail collected for the

violation shall be submitted to the state court administrator.

4. The clerk of the district court shall submit all other fines, fees, costs, and forfeited bail received from a magistrate to the state court administrator.

95 Acts, ch 143, §11
Subsection 1, paragraph a amended

602.8107 Collection of fines, penalties, fees, court costs, surcharges, and restitution.

1. Restitution as defined in section 910.1 and all other fines, penalties, fees, court costs, and surcharges owing and payable to the clerk shall be paid to the clerk of the district court. All amounts collected shall be distributed pursuant to sections 602.8106 and 602.8108 or as otherwise provided by this Code. The clerk may accept payment of an obligation or a portion thereof by credit card. Any fees charged to the clerk with respect to payment by credit card may be paid from receipts collected by credit card.

2. If the clerk receives payment from a person who is an inmate of a state institution or who is under the supervision of a judicial district department of correctional services, the payment shall be applied to the balance owed under the identified case number of the case which has resulted in the placement of the person in a state institution or under the supervision of the judicial district department of correctional services. If a case number is not identified, the clerk shall apply the payment to the balance owed in the criminal case with the oldest judgment against the person. Payments received under this section shall be applied in the following priority order:

- a. Pecuniary damages as defined in section 910.1, subsection 2.
- b. Fines or penalties and criminal penalty surcharges.
- c. Crime victim compensation program reimbursement.
- d. Court costs, court-appointed attorney fees, or public defender expenses.

3. A fine, penalty, court cost, fee, or surcharge is deemed delinquent if it is not paid within six months after the date it is assessed. An amount which was ordered by the court to be paid on a date fixed in the future pursuant to section 909.3 is deemed delinquent if it is not received by the clerk within six months after the fixed future date set out in the court order. If an amount was ordered to be paid by installments, and an installment is not received within thirty days after the date it is due, the entire amount of the judgment is deemed delinquent.

4. All fines, penalties, court costs, fees, surcharges, and restitution for court-appointed attorney fees or for expenses of a public defender which are delinquent may be collected by the county attorney or the county attorney's designee. Thirty-five percent of the amounts collected by the county attorney or the person procured or designated by the county attorney shall be deposited in the general fund of the county if the county attorney has filed the notice required in

section 331.756, subsection 5, unless the county attorney has discontinued collection efforts on a particular delinquent amount. The remainder shall be paid to the clerk for distribution under section 602.8108.

This subsection does not apply to amounts collected for victim restitution, the victim compensation fund, criminal penalty surcharge, or amounts collected as a result of procedures initiated under subsection 5 or under section 421.17, subsection 25.

The county attorney shall file with the clerk of the district court a notice of the satisfaction of each obligation to the full extent of the moneys collected in satisfaction of the obligation. The clerk of the district court shall record the notice and enter a satisfaction for the amounts collected.

5. If a county attorney does not file the notice and list of cases required in section 331.756, subsection 5, the judicial department may assign obligations to the centralized collection unit of the department of revenue and finance or its designee to collect delinquent debts owed to the clerk of the district court.

The department of revenue and finance may impose a fee established by rule to reflect the cost of processing which shall be added to the debt owed to the clerk of the district court. Any amounts collected by the unit will first be applied to the processing fee. The remaining amounts shall be remitted to the clerk of the district court for the county in which the debt is owed. The judicial department may prescribe rules to implement this section. These rules may provide for remittance of processing fees to the department of revenue and finance or its designee.

Satisfaction of the outstanding obligation occurs only when all fees or charges and the outstanding obligation are paid in full. Payment of the outstanding obligation only shall not be considered payment in full for satisfaction purposes.

The department of revenue and finance or its collection designee shall file with the clerk of the district court a notice of the satisfaction of each obligation to the full extent of the moneys collected in satisfaction of the obligation. The clerk of the district court shall record the notice and enter a satisfaction for the amounts collected.

95 Acts, ch 169, §6-8
1995 amendments to subsections 1, 4, and 5 effective January 1, 1996;
95 Acts, ch 169, §10
Subsection 1 amended
Subsection 4, unnumbered paragraphs 1 and 2 amended
Subsection 5 amended

602.8108A Prison infrastructure fund.

1. The Iowa prison infrastructure fund is created and established as a separate and distinct fund in the state treasury. Notwithstanding any other provision of this chapter to the contrary, the first eight million dollars of moneys remitted to the treasurer of state from fines, fees, costs, and forfeited bail collected by the clerks of the district court in criminal cases, including those collected for both scheduled and non-scheduled violations, collected in each fiscal year

commencing with the fiscal year beginning July 1, 1995, shall be deposited in the fund. Interest and other income earned by the fund shall be deposited in the fund. If the treasurer of state determines pursuant to 1994 Iowa Acts, chapter 1196, that bonds can be issued pursuant to this section and section 16.177, then the moneys in the fund are appropriated to and for the purpose of paying the principal of, premium, if any, and interest on bonds issued by the Iowa finance authority under section 16.177. Except as otherwise provided in subsection 2, amounts in the funds shall not be subject to appropriation for any purpose by the general assembly, but shall be used only for the purposes set forth in this section. The treasurer of state shall act as custodian of the fund and disburse amounts contained in it as directed by the department of corrections including the automatic disbursement of funds pursuant to the terms of bond indentures and documents and security provisions to trustees and custodians. The treasurer of state is authorized to invest the funds deposited in the fund subject to any limitations contained in any applicable bond proceedings. Any amounts remaining in the fund at the end of each fiscal year shall be transferred to the general fund.

2. If the treasurer of state determines that bonds cannot be issued pursuant to this section and section 16.177, the treasurer of state shall deposit the moneys in the prison infrastructure fund into the general fund of the state.

95 Acts, ch 202, §12
Subsection 1 amended

602.9203 Senior judgeship requirements — appointment and term.

1. A supreme court judge, court of appeals judge, district judge or district associate judge, who qualifies under subsection 2 may become a senior judge by filing with the clerk of the supreme court a written election in the form specified by the court administrator. The election shall be filed within six months of the date of retirement.

2. A judicial officer referred to in subsection 1 may be appointed, at the discretion of the supreme court, for a two-year term as a senior judge if the judicial officer meets all of the following requirements:

a. Retires from office on or after July 1, 1977, whether or not the judicial officer is of mandatory retirement age.

b. Meets the minimum requirements for entitlement to an annuity as specified in section 602.9106. However, a judge who elects to retire prior to attaining the age of sixty-five and who has not had twenty-five years of consecutive service, may serve as a senior judge, but shall not be paid an annuity pursuant to section 602.9204 until attaining age sixty-five.

c. Agrees in writing on a form prescribed by the court administrator to be available as long as the judicial officer is a senior judge to perform judicial duties as assigned by the supreme court for an ag-

gregate period of thirteen weeks out of each successive twelve-month period.

d. Submits evidence to the satisfaction of the supreme court that as of the date of retirement the judicial officer does not suffer from a permanent physical or mental disability which would substantially interfere with the performance of duties agreed to under paragraph "c" of this subsection.

e. Submits evidence to the satisfaction of the supreme court that since the date of retirement the judicial officer has not engaged in the practice of law.

3. The clerk of the supreme court shall maintain a book entitled "Roster of Senior Judges", and shall enter in the book the name of each judicial officer who files a timely election under subsection 1 and qualifies under subsection 2. A person shall be a senior judge upon entry of the person's name in the roster of senior judges and until the person becomes a retired senior judge as provided in section 602.9207, or until the person's name is stricken from the roster of senior judges as provided in section 602.9208, or until the person dies.

4. The supreme court shall cause each senior judge on the roster to actually perform judicial duties during each successive twelve-month period.

5. A senior judge may be reappointed to additional two-year terms, at the discretion of the supreme court, if the judicial officer meets the requirements of subsection 2.

95 Acts, ch 145, §1, 2
Subsection 2, unnumbered paragraph 1 amended
Subsection 5 stricken and rewritten

602.9204 Salary — annuity of senior judge and retired senior judge.

1. A judge who retires on or after July 1, 1994, and who is appointed a senior judge under section 602.9203 shall be paid a salary as determined by the general assembly. A senior judge or retired senior judge shall be paid an annuity under the judicial retirement system in the manner provided in section 602.9109, but computed under this section in lieu of section 602.9107, as follows: The annuity paid to a senior judge or retired senior judge shall be an amount equal to three percent of the basic senior judge salary, multiplied by the judge's years of service prior to retirement as a judge of one or more of the courts included under this article, for which contributions were made to the system, except the annuity of the senior judge or retired senior judge shall not exceed fifty percent of the basic senior judge salary used in calculating the annuity. However, following the twelve-month period during which the senior judge or retired senior judge attains seventy-eight years of age, the annuity paid to the person shall be an amount equal to three percent of the basic senior judge salary cap, multiplied by the judge's years of service prior to retirement as a judge of one or more of the courts included under this article, for which contributions were made to the system, except that the annuity shall not exceed fifty percent of the basic senior judge salary cap. A senior judge or retired

senior judge shall not receive benefits calculated using a basic senior judge salary established after the twelve-month period in which the senior judge or retired senior judge attains seventy-eight years of age. In addition, if a senior judge is under sixty-five years of age at the time the judge becomes a senior judge, the state shall pay the state's share of the senior judge's medical insurance premium until the judge attains age sixty-five.

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

a. "*Basic senior judge salary*" means the basic annual salary which the judge is receiving at the time the judge becomes separated from full-time service, as would be used in computing an annuity pursuant to section 602.9107 without service as a senior judge, plus seventy-five percent of the escalator.

b. "*Basic senior judge salary cap*" means the basic senior judge salary, at the end of the twelve-month period during which the senior judge or retired senior judge attained seventy-eight years of age, of the office in which the person last served as a judge before retirement as a judge or senior judge.

c. "*Escalator*" means the difference between the current basic salary, as of the time each payment is made up to and including the twelve-month period during which the senior judge or retired senior judge attains seventy-eight years of age, of the office in which the senior judge last served as a judge before retirement as a judge or senior judge, and the basic annual salary which the judge is receiving at the time the judge becomes separated from full-time service as a judge of one or more of the courts included in this article, as would be used in computing an annuity pursuant to section 602.9107 without service as a senior judge.

95 Acts, ch 145, §3, 4
Subsection 1 amended
Subsection 2, paragraphs a and c amended

602.9208 Relinquishment of senior judgeship — removal for cause — retirement annuity.

1. A senior judge, at any time prior to the end of the twelve-month period during which the judge attains seventy-eight years of age, may submit to the clerk of the supreme court a written request that the judge's name be stricken from the roster of senior

judges. Upon the receipt of the request the clerk shall strike the name of the person from the roster of senior judges, at which time the person shall cease to be a senior judge. A person who relinquishes a senior judgeship as provided in this subsection may be assigned to temporary judicial duties as provided in section 602.1612.

2. A senior judge is subject to removal under the provisions of article 2, part 1 for any of the causes specified in section 602.2106, subsection 3, paragraph "b". When a person is removed from a senior judgeship as provided in this subsection the clerk of the supreme court shall strike the name of the person from the roster of senior judges, at which time the person shall cease to be a senior judge.

3. A person who relinquishes a senior judgeship in the manner provided in subsection 1 or who is not reappointed shall be paid a retirement annuity that commences on the effective date of the relinquishment or the date of the completion of the term or appointment and shall be based upon the number of years the person served as a senior judge. A person who serves six or more years as a senior judge shall be paid a retirement annuity that is in an amount equal to the amount of the annuity the person is receiving on the effective date of the relinquishment or the date of the completion of the term or appointment in lieu of an amount determined according to section 602.9204. If the person serves less than six years as a senior judge, the person shall be paid a retirement annuity that is in an amount equal to an amount determined according to section 602.9107 added to an amount equal to the number of years the person served as a senior judge, divided by six, multiplied by the difference between the amount of the annuity the person is receiving on the effective date of the relinquishment and the amount determined according to section 602.9107. A person who is removed from a senior judgeship as provided in subsection 2 shall be paid a retirement annuity that commences on the effective date of the removal and is in an amount determined according to section 602.9107 in lieu of section 602.9204, and any service and annuity of the person as a senior judge is disregarded.

95 Acts, ch 145, §5
Subsection 3 amended

CHAPTER 610A

CIVIL LITIGATION BY INMATES AND PRISONERS

610A.1 Actions or appeals brought by inmates.

1. Notwithstanding section 610.1 or 822.5, if the person bringing a civil action or appeal is an inmate of an institution or facility under the control of the department of corrections or a prisoner of a municipi-

pal jail or detention facility, the inmate or prisoner shall pay in full all fees and costs associated with the action or appeal.

a. Upon filing of the action or appeal, the court shall order the inmate or prisoner to pay a minimum of twenty percent of the required filing fee before the

court will take any further action on the inmate's or prisoner's action or appeal and shall also order the inmate or prisoner to make monthly payments of ten percent of all outstanding fees and costs associated with the inmate's or prisoner's action or appeal.

b. If the inmate has an inmate account under section 904.702, the department of corrections shall withdraw moneys maintained in the account for the payment of fees and costs associated with the inmate's action or appeal in accordance with the court's order until the required fees and costs are paid in full. The inmate shall file a certified copy of the inmate's account balance with the court at the time the action or appeal is filed.

c. An inmate may authorize the department of corrections to make or the inmate may make an initial or subsequent payment beyond that requirement by this section.

d. The court may dismiss any civil action or appeal in which the inmate or prisoner has previously failed to pay fees and costs in accordance with this section.

2. The court may make the authorization provided for in section 610.1 if it finds that the inmate does not have sufficient moneys in the inmate's account or sufficient moneys flowing into the account to make the payments required in this section or, in the case of a prisoner of a municipal jail or detention facility, that the prisoner otherwise meets the requirements of section 610.1.

95 Acts, ch 167, §1
NEW section

610A.2 Dismissal of action or appeal.

1. In addition to the penalty provided in section 610.5, the court in which an affidavit of inability to pay has been filed may dismiss the action or appeal in whole or in part on a finding of either of the following:

- a. The allegation of inability to pay is false.
- b. The action or appeal is frivolous or malicious in whole or in part.

2. In determining whether an action or appeal is frivolous or malicious, the court may consider

whether the claim has no arguable basis in law or fact or the claim is substantially similar to a previous claim, either in that it is brought against the same party or in that the claim arises from the same operative facts as a previous claim which was determined to be frivolous or malicious.

3. In making the determination under subsection 1, the court may hold a hearing before or after service of process on its own motion or on the motion of a party. The hearing may be held by telephone or video conference on the motion of the court or of a party.

4. The court may dismiss the entire action or appeal or a portion of the action or appeal before or after service of process. If a portion of the action or appeal is dismissed, the court shall also designate the issues and defendants on which the action or appeal is to proceed without paying fees and costs. This order is not subject to interlocutory appeal.

95 Acts, ch 167, §2
NEW section

610A.3 Loss of good conduct time.

If an action or appeal brought by an inmate or prisoner in state or federal court is determined to be malicious or filed solely to harass or if the inmate or prisoner testifies falsely or otherwise presents false evidence or information to the court in such an action, the inmate shall lose some or all of the good conduct time credits acquired by the inmate or prisoner. The court may make an order deducting the credits or the credits may be deducted pursuant to a disciplinary hearing pursuant to chapter 903A at the facility at which the inmate is held.

95 Acts, ch 167, §3
NEW section

610A.4 Cost setoff.

The state or a municipality shall have the right to set off the cost of incarceration of an inmate or prisoner at any time, following notice and hearing, against any claim made by or monetary obligation owed to an inmate or prisoner for whom the cost of incarceration can be calculated.

95 Acts, ch 167, §4
NEW section

CHAPTER 614

LIMITATIONS OF ACTIONS

614.1 Period.

Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared:

1. *Penalties or forfeitures under ordinance.* Those to enforce the payment of a penalty or forfeiture under an ordinance, within one year.

2. *Injuries to person or reputation — relative rights — statute penalty.* Those founded on injuries to the person or reputation, including injuries to

relative rights, whether based on contract or tort, or for a statute penalty, within two years.

3. *Against sheriff or other public officer.* Those against a sheriff or other public officer for the non-payment of money collected on execution within three years of collection.

4. *Unwritten contracts — injuries to property — fraud — other actions.* Those founded on unwritten contracts, those brought for injuries to property, or for relief on the ground of fraud in cases heretofore solely cognizable in a court of chancery, and all other actions

not otherwise provided for in this respect, within five years, except as provided by subsections 8 and 10.

5. *Written contracts — judgments of courts not of record — recovery of real property.* Those founded on written contracts, or on judgments of any courts except those provided for in the next subsection, and those brought for the recovery of real property, within ten years.

6. *Judgments of courts of record.* Those founded on a judgment of a court of record, whether of this or of any other of the United States, or of the federal courts of the United States, within twenty years.

7. *Judgment quieting title.* No action shall be brought to set aside a judgment or decree quieting title to real estate unless the same shall be commenced within ten years from and after the rendition thereof.

8. *Wages.* Those founded on claims for wages or for a liability or penalty for failure to pay wages, within two years.

9. *Malpractice.* Those founded on injuries to the person or wrongful death against any physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor, or nurse, licensed under chapter 147, or a hospital licensed under chapter 135B, arising out of patient care, within two years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of, the injury or death for which damages are sought in the action, whichever of the dates occurs first, but in no event shall any action be brought more than six years after the date on which occurred the act or omission or occurrence alleged in the action to have been the cause of the injury or death unless a foreign object unintentionally left in the body caused the injury or death.

10. *Secured interest in farm products.* Those founded on a secured interest in farm products, within two years from the date of sale of the farm products against the secured interest of the creditor.

11. *Improvements to real property.* In addition to limitations contained elsewhere in this section, an action arising out of the unsafe or defective condition of an improvement to real property based on tort and implied warranty and for contribution and indemnity, and founded on injury to property, real or personal, or injury to the person or wrongful death, shall not be brought more than fifteen years after the date on which occurred the act or omission of the defendant alleged in the action to have been the cause of the injury or death. However, this subsection does not bar an action against a person solely in the person's capacity as an owner, occupant, or operator of an improvement to real property.

12. *Sexual abuse or sexual exploitation by a counselor or therapist.* An action for damages for injury suffered as a result of sexual abuse, as defined in section 709.1, by a counselor or therapist, as defined in section 709.15, or as a result of sexual exploitation by a counselor or therapist, shall be brought within five years of the date the victim was last treated by the counselor or therapist.

13. *Public bonds or obligations.* Those founded on the cancellation, transfer, redemption, or replacement of public bonds or obligations by an issuer, trustee, transfer agent, registrar, depository, paying agent, or other agent of the public bonds or obligations, within eleven years of the cancellation, transfer, redemption, or replacement of the public bonds or obligations.

95 Acts, ch 108, §21
Subsection 9 amended

CHAPTER 615

LIMITATIONS ON JUDGMENTS

615.3 Future judgments without foreclosure.

A judgment hereafter rendered on a promissory obligation secured by a mortgage, deed of trust, or real estate contract upon property which at the time of the judgment is either used for an agricultural purpose as defined in section 535.13 or a one-family or two-family dwelling which is the residence of the mortgagor, but without foreclosure against the security, shall not be subject to renewal by action thereon,

and, after the lapse of two years from the date of rendition, shall be without force and effect for any purpose whatsoever except as a setoff or counterclaim. As used in this section, "mortgagor" means a mortgagor of a mortgage or a borrower executing a deed of trust as provided in chapter 654 or the vendee of a real estate contract.

95 Acts, ch 49, §22
Section amended

CHAPTER 622

EVIDENCE

622.71A Volunteer fire fighters — witness compensation.

A volunteer fire fighter, as defined in section 85.61, who is subpoenaed to appear as a witness in connection with a matter regarding an event or transaction which the fire fighter perceived or investigated in the course of duty as a volunteer fire fighter, shall receive reasonable compensation as determined by the court from the party who subpoenaed the volunteer fire fighter. The daily compensation shall be equal to the average daily wage paid to full-time fire fighters of

the same rank within the judicial district. However, the requirements of this section are not applicable if a volunteer fire fighter will receive the volunteer fire fighter's regular salary or other compensation pursuant to the policy of the volunteer fire fighter's regular employer, for the period of time required for travel to and from where the court or other tribunal is located and while the volunteer fire fighter is required to remain at that place pursuant to the subpoena.

95 Acts, ch 19, §1
NEW section

CHAPTER 626

EXECUTION

626.10 Duplicate returns and record.

If real estate is sold under said execution the officer shall make return thereof in duplicate, one of which shall be appended to the execution and returned to the court from which it is issued, the other with a copy of the execution to the district court of the county in

which the real estate is situated, which shall be filed by the clerk and handled in the same manner as if such judgment had been rendered and execution issued from the court.

95 Acts, ch 91, §5
Section amended

CHAPTER 628

REDEMPTION

628.13 By holder of title.

The terms of redemption, when made by the titleholder, shall be the payment into the clerk's office of the amount of the certificate, and all sums paid by the holder thereof in effecting redemptions, added to the amount of the holder's own lien, or the amount the holder has credited thereon, if less than the whole, with interest at contract rate on the certificate of sale from its date, and upon sums so paid by way of redemption from date of payment, and upon the amount credited on the holder's own judgment from the time of said credit, in each case including costs.

Redemption may also be made by the titleholder presenting to the clerk of the district court the sheriff's certificate of sale properly assigned to the title-

holder, whereupon the clerk of the district court shall cancel the certificate.

95 Acts, ch 91, §6
Unnumbered paragraph 2 amended

628.20 Excess payment — credit.

If the amount paid to the clerk is in excess of the prior bid and liens, the clerk shall refund the excess to the party paying the amount. If the clerk is the clerk of the district court where the judgment giving rise to the lien was entered, the clerk shall credit upon the lien the full amount thereof, including interest and costs, or such less amount as the lienholder is willing to credit therein, as shown by the affidavit filed.

95 Acts, ch 91, §7
Section amended

CHAPTER 631

SMALL CLAIMS

631.1 Small claims.

1. The following actions or claims are small claims and shall be commenced, heard and determined as provided in this chapter:

A civil action for a money judgment where the amount in controversy is three thousand dollars or less for actions commenced on or after July 1, 1994, and before July 1, 1995, and four thousand dollars or less for actions commenced on or after July 1, 1995, exclusive of interest and costs.

2. The district court sitting in small claims shall have concurrent jurisdiction of an action for forcible entry and detainer which is based on those grounds set forth in section 648.1, subsections 1, 2, 3 and 5. When commenced under this chapter, the action shall be a small claim for the purposes of this chapter.

3. The district court sitting in small claims has concurrent jurisdiction of an action of replevin if the value of the property claimed is three thousand dollars or less for actions commenced on or after July 1, 1994, and before July 1, 1995, and four thousand dollars or less for actions commenced on or after July 1, 1995. When commenced under this chapter, the action is a small claim for the purposes of this chapter.

4. The district court sitting in small claims has concurrent jurisdiction of motions and orders relating to executions against personal property, including garnishments, where the value of the property or garnisheed money involved is three thousand dollars or less for actions commenced on or after July 1, 1994, and before July 1, 1995, and four thousand dollars or less for actions commenced on or after July 1, 1995.

5. The district court sitting in small claims has concurrent jurisdiction of an action for abandonment of a mobile home or personal property pursuant to section 555B.3, if no money judgment in excess of four thousand dollars is sought for actions commenced on or after July 1, 1995. If commenced under this chapter, the action is a small claim for the purposes of this chapter.

95 Acts, ch 49, §23

Jurisdictional amount to revert to \$2,000 if a proper court declares the \$3,000 or \$4,000 amount unconstitutional; 94 Acts, ch 1117, §2; 95 Acts, ch 49, §28

Subsection 5 amended

631.4 Service — time for appearance.

The manner of service of original notice and the times for appearance shall be as provided in this section.

1. *Actions for money judgment or replevin.* In an action for money judgment or an action of replevin the clerk shall cause service to be obtained as follows, and the defendant is required to appear within the period of time specified:

a. If the defendant is a resident of this state, or if the defendant is a nonresident of this state and is subject to the jurisdiction of the court under rule of civil procedure 56.2, the plaintiff may elect service

under this paragraph, and upon receipt of the prescribed costs the clerk shall mail to the defendant by certified mail, restricted delivery, return receipt to the clerk requested, a copy of the original notice together with a conforming copy of an answer form. The defendant is required to appear within twenty days following the date service is made.

b. If the defendant is a resident of this state, or if the defendant is a nonresident of this state and is subject to the jurisdiction of the court under rule of civil procedure 56.2, the plaintiff may elect service under this paragraph, and upon receipt of the prescribed costs the clerk shall cause a copy of the original notice and a conforming copy of an answer form to be delivered to a peace officer or other person for personal service as provided in rule of civil procedure 52, 56.1 or 56.2. The defendant is required to appear within twenty days following the date service is made.

c. If the defendant is a nonresident of this state and is subject to the jurisdiction of the court under rule of civil procedure 56.2, the plaintiff may elect service in any other manner that is approved by the court as provided in that rule, and the defendant is required to appear within sixty days after the date of service.

d. If the defendant is a nonresident of this state and is subject to the jurisdiction of the court under section 617.3, the plaintiff may elect that service be made as provided in that section. The clerk shall collect the prescribed fees and costs, and shall cause duplicate copies of the original notice to be filed with the secretary of state and shall cause a copy of the original notice and a conforming copy of an answer form to be mailed to the defendant in the manner prescribed in section 617.3. The defendant is required to appear within sixty days from the date of filing with the secretary of state.

2. *Actions for forcible entry or detention.*

a. In an action for the forcible entry or detention of real property, the clerk shall set a date, time and place for hearing, and shall cause service as provided in this subsection.

b. Original notice shall be served personally upon each defendant as provided in rule 56.1 of the rules of civil procedure, which service shall be made at least three days prior to the date set for hearing. Upon receipt of the prescribed costs the clerk shall cause the original notice to be delivered to a peace officer or other person for service upon each defendant.

c. If personal service cannot be made upon each defendant, as provided in rule of civil procedure 56.1, the plaintiff may elect to post, after at least three attempts to perfect service upon each defendant, one or more copies of the original notice upon the real property being detained by each defendant at least five days prior to the date set for hearing. In such instances, the plaintiff shall also mail, by certified mail and first class mail, to each defendant, at the place held out by each defendant as the place for re-

cept of such communications or, in the absence of such designation, at each defendant's last known place of residence, a copy of the original notice at least five days prior to the date set for hearing. Under this paragraph, service shall be deemed complete upon each defendant by the filing with the clerk of the district court of one or more affidavits indicating that a copy of the original notice was both posted and mailed to each defendant as provided in this paragraph.

3. *Actions for abandonment of mobile homes or personal property pursuant to chapter 555B.*

a. In an action for abandonment of a mobile home or personal property, the clerk shall set a date, time, and place for hearing, and shall cause service to be made as provided in this subsection.

b. Original notice shall be served personally on each defendant as provided in section 555B.4.

95 Acts, ch 125, §13

Subsection 2, paragraph b amended

CHAPTER 633

PROBATE CODE

633.108 Small distributions to minors — payment.

Whenever a minor becomes entitled under the terms of a will to a bequest or legacy, to a share of the estate of an intestate, or to a beneficial interest in a trust fund upon the distribution of the trust fund, and the value of the bequest, legacy, share, or interest does not exceed the sum of ten thousand dollars, and a conservator for the minor has not been appointed, the court having jurisdiction of the distribution of the funds may, in its discretion, upon the application of the fiduciary, enter an order authorizing the fiduciary to pay the bequest, legacy, share, or interest to a custodian under any uniform transfers to minors Act. Receipt by the custodian, when presented to the court or filed with the report of distribution of the fiduciary, shall have the same force and effect as though the payment had been made to a duly appointed and qualified conservator for the minor.

95 Acts, ch 63, §3
Section amended

633.156 Deposits by corporate fiduciaries.

Section 633.155 shall not be construed to prohibit a corporate fiduciary from making a deposit of estate funds in its own banking department or in the banking department of an affiliated bank. For purposes of this section, "affiliated bank" means any bank that controls, directly or indirectly, the fiduciary or is controlled, directly or indirectly, by an entity which also controls, directly or indirectly, the fiduciary.

95 Acts, ch 164, §1
Section amended

633.219 Share of others than surviving spouse.

The part of the intestate estate not passing to the surviving spouse, or if there is no surviving spouse, the entire net estate passes as follows:

1. To the issue of the decedent per stirpes.
2. If there is no surviving issue, to the parents of the decedent equally; and if either parent is dead, the portion that would have gone to such deceased parent shall go to the survivor.
3. If there is no person to take under either subsection 1 or 2 of this section, the estate shall be

divided and set aside into two equal shares. One share shall be distributed to the issue of the decedent's mother per stirpes and one share shall be distributed to the issue of the decedent's father per stirpes. If there are no surviving issue of one deceased parent, the entire estate passes to the issue of the other deceased parent in accordance with this subsection.

4. If there is no person to take under subsection 1, 2, or 3 of this section, and the decedent is survived by one or more grandparents or issue of grandparents, half the estate passes to the paternal grandparents, if both survive, or to the surviving paternal grandparent if only one survives. If neither paternal grandparent survives, this half share shall be further divided into two equal subshares. One subshare shall be distributed to the issue of the decedent's paternal grandmother per stirpes and one subshare shall be distributed to the issue of the decedent's paternal grandfather per stirpes. If there are no surviving issue of one deceased paternal grandparent, the entire half share passes to the issue of the other deceased paternal grandparent and their issue in the same manner. The other half of the decedent's estate passes to the maternal grandparents and their issue in the same manner. If there are no surviving grandparents or issue of grandparents on either the paternal or maternal side, the entire estate passes to the decedent's surviving grandparents or their issue on the other side in accordance with this subsection.

5. If there is no person to take under subsection 1, 2, 3, or 4 of this section, the portion uninherited shall go to the issue of the deceased spouse of the intestate, per stirpes. If the intestate has had more than one spouse who died in lawful wedlock, it shall be equally divided between the issue, per stirpes, of those deceased spouses.

6. If there is no person who qualifies under either subsection 1, 2, 3, 4, or 5 of this section, the intestate property shall escheat to the state of Iowa.

95 Acts, ch 63, §4

Subsections 3 and 4 amended

633.273 Antilapse statute.

1. If a devisee dies before the testator, leaving issue who survive the testator, the devisee's issue

who survive the testator shall inherit the property devised to the devisee per stirpes, unless from the terms of the will, the intent is clear and explicit to the contrary.

2. A person who would have been a devisee under a class gift, if the person had survived the testator, is treated as a devisee for purposes of this section, provided the person's death occurred after the execution of the will, unless from the terms of the will, the intent is clear and explicit to the contrary.

95 Acts, ch 63, §5
Subsection 1 amended

633.410 Limitation on filing claims against decedent's estate.

All claims against a decedent's estate, other than charges, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, are forever barred against the estate, the personal representative, and the distributees of the estate, unless filed with the clerk within the later to occur of four months after the date of the second publication of the notice to creditors or, as to each claimant whose identity is reasonably ascertainable, one month after service of notice by ordinary mail to the claimant's last known address. However, notice is not required to be given by mail to any creditor whose claim will be paid or otherwise satisfied during administration and the personal representative may waive the limitation on filing provided under this section. This section does not bar claims for which there is insurance coverage, to the extent of the coverage, claims for debts created under section 249A.5 relating to the recovery of medical assistance payments, or claimants entitled to equitable relief due to peculiar circumstances.

95 Acts, ch 68, §7
Section amended

633.574 Procedure in lieu of conservatorship.

If a conservator has not been appointed, money due a minor or other property to which a minor is entitled, not exceeding in the aggregate ten thousand dollars in value, shall be paid or delivered to a custodian under any uniform transfers to minors Act. The written receipt of the custodian constitutes an acquittance of the person making the payment of money or delivery of property.

95 Acts, ch 63, §6
Section amended

633.703B Availability of amendment procedures.

Amendment procedures in section 633.703A and this section shall be available to trusts created in any manner, whether by trust agreement, will, deed, or otherwise, and may be used on or after July 1, 1994, for any trust created before or after that date.

95 Acts, ch 67, §47
Section amended

633.704 Disclaimer.

1. *Right of disclaimer.* A person, including a person designated to take pursuant to a power of ap-

pointment, is not required to take as a distributee, as a beneficiary, as an annuitant, or as a transferee including as a transferee in joint tenancy, or otherwise, and a person, as a donee of a power, is not required to accept any right of appointment. If the requirements of this section are met, a person may disclaim, in whole or in part, the transfer of a power, or the transfer, receipt of, or entitlement or succession to, any property, real or personal, or any interest in property, including but not limited to an interest in trust, and including but not limited to ownership, proceeds of, or other benefits to or under a life insurance policy or annuity contract, by delivering a written instrument of disclaimer within the time and in the manner provided in this section. The instrument shall:

a. Describe the property, interest, or right disclaimed.

b. Declare the disclaimer and the extent of the disclaimer.

c. Be signed and acknowledged by the disclaimant.

2. *Time of disclaimer — filing — irrevocability.*

a. *Time of disclaimer.* The disclaimer instrument shall be received by the transferor of the property, interest, or right, the transferor's fiduciary, or the holder of the legal title to which the property, interest, or right relates, not later than the date which is nine months after the later of the date on which the transfer of the property, interest, or right is made, or the date on which the disclaimant attains eighteen years of age. The nine-month period for making a disclaimer shall be determined with reference to each transfer. With respect to a testamentary transfer, the transfer occurs upon the date of the decedent's death. Any property, interest, or right may be disclaimed nine months after the date of the disclaimant's eighteenth birthday even though the disclaimant received benefits from the property, interest, or right without any action on the disclaimant's part before attaining eighteen years of age. However, if a person entitled to disclaim does not have actual knowledge of the existence of the transfer, the disclaimer may be made not later than nine months after the person has actual knowledge of the existence of the transfer.

b. *Filing.* A copy of an instrument of disclaimer affecting real estate shall be filed in the office of the county recorder of the county where the real estate is located. Failure to file with the county recorder within the time permitted for disclaimer does not invalidate the disclaimer. A copy of an instrument of disclaimer, regardless of subject, may be filed with the clerk of court of the county in which proceedings for administration have been commenced, if applicable.

c. *Irrevocability.* An instrument of disclaimer shall be unqualified and is irrevocable from and after the date of its receipt.

3. *Effective disclaimer.*

a. *Passage of disclaimed interest or property.* Unless the transferor has otherwise provided, the property, interest, or right disclaimed, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest

or right disclaimed, descends or shall be distributed as if the disclaimant has died prior to the date of the transfer, or if the disclaimant is one designated to take pursuant to a power of appointment exercised by testamentary instrument, then as if the disclaimant has predeceased the donee of the power unless the donee of the power has otherwise provided. In every case, the disclaimer relates back for all purposes to the date of the transfer. In the case of a disclaiming beneficiary under a will, other than a spouse, the property, interest, or right disclaimed passes to the heirs of the disclaimant unless from the terms of the transferor's will the intent is clear and explicit to the contrary, in which event the property, interest, or right disclaimed passes pursuant to the will. In the case of a disclaimer under a will by a spouse the property, interest, or right disclaimed lapses unless from the terms of the transferor's will the intent is clear and explicit to the contrary.

b. Future interest. A person who has a present and a future interest in property and who disclaims the present interest, in whole or in part, shall be deemed to have disclaimed the future interest to the same extent. However, if such person disclaims only the future interest, in whole or in part, that person shall retain the present interest, and the disclaimer shall only affect the future interest involved.

c. Death or disability of disclaimant. If a person eligible to disclaim dies within the time allowed for a disclaimer, the right to disclaim continues for the time allowed and the personal representative of the person eligible to disclaim has the same right to disclaim as the disclaimant and may disclaim on behalf of the personal representative's decedent. If a person entitled to disclaim is disabled, the court may authorize or direct a conservator or guardian to exercise the right to disclaim on behalf of the person under disability if the court finds it is in the person's best interests.

d. Disclaimer by attorney in fact. Whenever a principal designates in writing another as the principal's attorney in fact or agent by a power of attorney, and the designation authorizes the attorney in fact to disclaim the principal's interest in any property, the attorney in fact has the same right to disclaim as the disclaimant and may disclaim on behalf of the attorney in fact's principal.

4. Waiver and bar. An assignment, conveyance, encumbrance, pledge, or transfer of any property, interest, or right, or a contract therefor, or a written waiver of the right to disclaim, or an acceptance of any property, interest, or right, by an heir, devisee, donee, transferee, joint owner, person succeeding to a disclaimed interest, annuitant, beneficiary under a life insurance policy, or person designated to take

pursuant to a power of appointment exercised by testamentary instrument, or a sale of property by execution, made before the expiration of the period in which a person may disclaim as provided in this section, bars the right to disclaim that property, interest, or right. An election by a surviving spouse under sections 633.236 to 633.246 is not a waiver or bar of the right to disclaim. The right to disclaim exists irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction. A disclaimer, when received, as provided in this section, or a written waiver of the right to disclaim, is binding upon the disclaimant or person waiving and all parties claiming by, through, and under the disclaimant or person waiving. If a beneficiary who disclaims any property, interest, or right is also a fiduciary, actions taken by the person in the exercise of fiduciary powers to preserve or maintain the property, interest, or right shall not be treated as an acceptance of the property, interest, or right. A fiduciary power to distribute any property, interest, or right to designated beneficiaries, if subject to an ascertainable standard, does not bar the right to disclaim by a beneficiary who is also a fiduciary.

5. Exclusiveness of remedy. This section does not abridge the right of a person to assign, convey, release, or renounce any property, interest, or right arising under any other statute.

6. Effective date. This section applies only to transfers occurring on or after July 1, 1981.

95 Acts, ch 63, §7
Subsection 3, NEW paragraph d

633.708 Disposition of medical assistance special needs trusts.

Regardless of the terms of a medical assistance special needs trust, any income received or asset added to the trust during a one-month period shall be expended as provided for medical assistance income trusts under section 633.709, on a monthly basis, during the life of the beneficiary. Any increase in income or principal retained in the trust from a previous month may be expended, during the life of the beneficiary, only for reasonable and necessary expenses of the trust, not to exceed ten dollars per month without court approval, for special needs of the beneficiary attributable to the beneficiary's disability and approved by the district court, for medical care or services that would otherwise be covered by medical assistance under chapter 249A, or to reimburse the state for medical assistance paid on behalf of the beneficiary.

95 Acts, ch 68, §8
1995 amendments effective October 1, 1995; 95 Acts, ch 68, §9
Section amended

CHAPTER 634A

SUPPLEMENTAL NEEDS TRUSTS FOR PERSONS WITH DISABILITIES

CHAPTER 648

FORCIBLE ENTRY OR DETENTION OF REAL PROPERTY

648.5 Jurisdiction — hearing — personal service.

The court within the county shall have jurisdiction of actions for the forcible entry or detention of real property. They shall be tried as equitable actions. Unless commenced as a small claim, a petition shall be presented to a district court judge. Upon receipt of the petition, the court shall order a hearing which shall not be later than seven days from the date of the order. Personal service shall be made upon the defendant not less than three days prior to the hearing. In the event that personal service cannot be completed in time to give the defendant the minimum notice required by this section, the court may set a new hearing date. A default cannot be made upon a

defendant unless the three days' notice has been given.

95 Acts, ch 125, §14
Section amended

648.22 Judgment — execution — costs.

If the defendant is found guilty, judgment shall be entered that the defendant be removed from the premises, and that the plaintiff be put in possession of the premises, and an execution for the defendant's removal within three days from the judgment shall issue accordingly, to which shall be added a clause commanding the officer to collect the costs as in ordinary cases.

95 Acts, ch 125, §15
Section amended

CHAPTER 654

FORECLOSURE OF REAL ESTATE MORTGAGES

654.12B Priority of purchase money mortgage lien.

The lien created by a purchase money mortgage shall have priority over and is senior to preexisting judgments against the purchaser and any other right, title, interest, or lien arising either directly or indirectly by, through, or under the purchaser. A mortgage is a purchase money mortgage if it is either of the following:

1. Taken or retained by the seller of the real estate to secure all or part of its price.
2. Taken by a lender who, by making an advance

or incurring an obligation, provides funds to enable the purchaser to acquire rights in the real estate, including all costs in connection with the purchase, if the funds are in fact so used. The mortgage shall contain a recital that it is a purchase money mortgage in order to provide notice to third parties of its priority. If there is more than one purchase money mortgage, a prior recorded mortgage has priority unless "the prior recorded mortgage" or "a mortgage recorded earlier" provides otherwise.

95 Acts, ch 175, §2
NEW section

CHAPTER 654C

FARM MEDIATION — ANIMAL FEEDING OPERATION STRUCTURES

654C.1 Definitions.

As used in this chapter, unless otherwise required:

1. "Animal feeding operation structure" means the same as defined in section 455B.161.
2. "Dispute" means a controversy between an owner and a neighbor, which arises from negotiations between the parties to establish an animal feeding operation structure within the separation distance.
3. "Farm mediation service" means the organization selected pursuant to section 13.13.
4. "Neighbor" means a person benefiting from a separation distance required pursuant to section 455B.162, including a person owning a residence other than the owner of the animal feeding operation, a commercial enterprise, bona fide religious institu-

tion, educational institution, or a city, authorized to execute a waiver.

5. "Owner" means the owner of an animal feeding operation, as defined in section 455B.161, which utilizes an animal feeding operation structure.

6. "Participate" or "participation" means attending a mediation meeting, and having knowledge about and discussing issues concerning a subject relating to a dispute.

7. "Waiver" means a waiver executed between an owner and a neighbor as provided in section 455B.165.

95 Acts, ch 195, §27
NEW section

654C.2 Mediation proceedings.

1. A person who is an owner or a neighbor may file a request for mediation with the farm mediation service. Upon receipt of the request for mediation, the farm mediation service shall conduct an initial consultation with each party to the dispute privately and without charge. Mediation shall be cancelled after the initial consultation, unless both parties agree to proceed.

2. Both parties to the dispute shall file with the farm mediation service information required by the service to conduct mediation.

3. Unless mediation is cancelled, within twenty-one days after receiving a mediation request, the farm mediation service shall send a mediation meeting notice to all parties to the dispute setting a time and place for an initial mediation meeting between the parties and a mediator directed by the farm mediation service to assist in mediation. An initial mediation meeting shall be held within twenty-one days of the issuance of the mediation meeting notice.

95 Acts, ch 195, §28
NEW section

654C.3 Duties of the mediator.

At the initial mediation meeting and subsequent meetings, the mediator shall:

1. Listen to all involved parties.
2. Attempt to mediate between all involved parties.
3. Encourage compromise and workable solutions.

4. Advise, counsel, and assist the parties in attempting to arrive at an agreement for the future conduct of relations among themselves.

95 Acts, ch 195, §29
NEW section

654C.4 Mediation period.

The mediator may call mediation meetings during the mediation period, which is up to forty-two days after the farm mediation service received the mediation request. However, if all parties consent, mediation may continue after the end of the mediation period.

95 Acts, ch 195, §30
NEW section

654C.5 Mediation agreement.

1. If an agreement is reached between all parties, the mediator shall draft a written mediation agreement, which shall be signed by the parties. The mediation agreement shall provide for a waiver which the mediator shall file in the office of the recorder of deeds of the county in which the benefited land is located, as provided in section 455B.165. The mediator shall forward a mediation agreement to the farm mediation service.

2. The parties agreeing to mediation shall participate in at least one mediation meeting. A party to a dispute may be represented by another person, if the person participates in mediation and has authority to discuss the dispute on behalf of the party being represented. This section does not require a party to reach an agreement. This section does not require a person to change a position, alter an activity which is a subject of the dispute, alter an application for a permit for construction of an animal feeding operation, or restructure a contract.

3. The parties to the mediation agreement may enforce the mediation agreement as a legal contract.

4. If the parties do not agree to proceed with mediation, or if a mediation agreement is not reached, the parties may sign a statement prepared by the mediator that mediation proceedings were not conducted or concluded or that the parties did not reach an agreement.

95 Acts, ch 195, §31
NEW section

654C.6 Extension of deadlines.

Upon petition by all parties, the farm mediation service may, for good cause, extend a deadline imposed by section 654C.2 or 654C.4 for up to thirty days.

95 Acts, ch 195, §32
NEW section

654C.7 Effect of mediation.

An interest in property or rights and obligations under a contract are not affected by the failure of a person to obtain a mediation agreement.

95 Acts, ch 195, §33
NEW section

CHAPTER 657**NUISANCES****657.1 Nuisance — what constitutes — action to abate.**

Whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property, so as essentially to unreasonably interfere with the comfortable enjoyment of life or property, is a nuisance, and a civil action by ordinary proceedings may be brought to enjoin and

abate the same and to recover damages sustained on account thereof.

95 Acts, ch 195, §34
Section amended

657.2 What deemed nuisances.

The following are nuisances:

1. The erecting, continuing, or using any building

or other place for the exercise of any trade, employment, or manufacture, which, by occasioning noxious exhalations, unreasonably offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort, or property of individuals or the public.

2. The causing or suffering any offal, filth, or noisome substance to be collected or to remain in any place to the prejudice of others.

3. The obstructing or impeding without legal authority the passage of any navigable river, harbor, or collection of water.

4. The corrupting or rendering unwholesome or impure the water of any river, stream, or pond, or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others.

5. The obstructing or encumbering by fences, buildings, or otherwise the public roads, private ways, streets, alleys, commons, landing places, or burying grounds.

6. Houses of ill fame, kept for the purpose of prostitution and lewdness, gambling houses, places resorted to by persons participating in criminal gang activity prohibited by chapter 723A, or places resorted to by persons using controlled substances, as defined in section 124.101, subsection 6, in violation of law, or houses where drunkenness, quarreling, fighting, or breaches of the peace are carried on or permitted to the disturbance of others.

7. Billboards, signboards, and advertising signs, whether erected and constructed on public or private property, which so obstruct and impair the view of any portion or part of a public street, avenue, highway, boulevard, or alley or of a railroad or street railway track as to render dangerous the use thereof.

8. Cotton-bearing cottonwood trees and all other cotton-bearing poplar trees in cities.

9. Any object or structure hereafter erected within one thousand feet of the limits of any municipal or regularly established airport or landing place, which may endanger or obstruct aerial navigation, including take-off and landing, unless such object or structure constitutes a proper use or enjoyment of the land on which the same is located.

10. The depositing or storing of flammable junk, such as old rags, rope, cordage, rubber, bones, and paper, by dealers in such articles within the fire limits of a city, unless in a building of fireproof construction, is a public nuisance.

11. The emission of dense smoke, noxious fumes, or fly ash in cities is a nuisance and cities may provide the necessary rules for inspection, regulation and control.

12. Dense growth of all weeds, vines, brush, or other vegetation in any city so as to constitute a health, safety, or fire hazard is a public nuisance.

13. Trees infected with Dutch elm disease in cities.

95 Acts, ch 195, §35
Subsection 1 amended

657.11 Animal feeding operations.

1. The purpose of this section is to protect animal agricultural producers who manage their operations

according to state and federal requirements from the costs of defending nuisance suits, which negatively impact upon Iowa's competitive economic position and discourage persons from entering into animal agricultural production. This section is intended to promote the expansion of animal agriculture in this state by protecting persons engaged in the care and feeding of animals. The general assembly has balanced all competing interests and declares its intent to protect and preserve animal agricultural production operations.

2. If a person has received all permits required pursuant to chapter 455B for an animal feeding operation, as defined in section 455B.161, there shall be a rebuttable presumption that an animal feeding operation is not a public or private nuisance under this chapter or under principles of common law, and that the animal feeding operation does not unreasonably and continuously interfere with another person's comfortable use and enjoyment of the person's life or property under any other cause of action. The rebuttable presumption also applies to persons who are not required to obtain a permit pursuant to chapter 455B for an animal feeding operation as defined in section 455B.161. The rebuttable presumption shall not apply if the injury to a person or damage to property is proximately caused by a failure to comply with a federal statute or regulation or a state statute or rule which applies to the animal feeding operation.

3. The rebuttable presumption may be overcome by clear and convincing evidence of both of the following:

a. The animal feeding operation unreasonably and continuously interferes with another person's comfortable use and enjoyment of the person's life or property.

b. The injury or damage is proximately caused by the negligent operation of the animal feeding operation.

4. The rebuttable presumption created by this section shall apply regardless of the established date of operation or expansion of the animal feeding operation. The rebuttable presumption includes, but is not limited to, a defense for actions arising out of the care and feeding of animals; the handling or transportation of animals; the treatment or disposal of manure resulting from animals; the transportation and application of animal manure; and the creation of noise, odor, dust, or fumes arising from an animal feeding operation.

5. An animal feeding operation that complies with the requirements in chapter 455B for animal feeding operations shall be deemed to meet any common law requirements regarding the standard of a normal person living in the locality of the operation.

6. A person who brings a losing cause of action against a person for whom the rebuttable presumption created under this section is not rebutted, shall be liable to the person against whom the action was brought for all costs and expenses incurred in the defense of the action, if the court determines that a claim is frivolous.

7. The rebuttable presumption created in this section does not apply to an injury to a person or damages to property caused by the animal feeding

operation before May 31, 1995.
95 Acts, ch 195, §36
 NEW section

CHAPTER 666

OFFICIAL BONDS, FINES AND FORFEITURES

666.6 Annual report of outstanding fines, penalties, forfeitures, and recognizances.

The clerk of the district court shall make an annual report in writing to the state court administrator no later than August 15 of the fines, penalties, forfeitures, and recognizances which have not been paid,

remitted, canceled, or otherwise satisfied during the previous fiscal year.

95 Acts, ch 169, §9
 1995 amendment effective January 1, 1996; 95 Acts, ch 169, §10
 Section amended

CHAPTER 690

BUREAU OF CRIMINAL IDENTIFICATION

690.5 Administrative sanctions.

An agency subject to fingerprinting and disposition requirements under this chapter shall take all steps necessary to ensure that all agency officials and employees understand the requirements and shall provide for and impose administrative sanctions, as appropriate, for failure to report as required.

If a criminal or juvenile justice agency subject to fingerprinting and disposition requirements fails to comply with the requirements, the commissioner of public safety shall order that the agency's access to

criminal history record information maintained by the repository be denied or restricted until the agency complies with the reporting requirements.

The state court administrator shall develop a policy to ensure that court personnel understand and comply with the fingerprinting and disposition requirements and shall also develop sanctions for court personnel who fail to comply with the requirements.

95 Acts, ch 191, §27
 Unnumbered paragraph 2 amended

CHAPTER 692

CRIMINAL HISTORY AND INTELLIGENCE DATA

692.1 Definitions of words and phrases.

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

1. "*Adjudication data*" means information that an adjudication of delinquency for an act which would be an aggravated misdemeanor or felony if committed by an adult was entered against a juvenile and includes the date and location of the delinquent act and the place and court of adjudication.

2. "*Arrest data*" means information pertaining to an arrest for a public offense and includes the charge, date, time and place. Arrest data includes arrest warrants for all public offenses outstanding and not served and includes the filing of charges, by preliminary information when filed by a peace officer or law enforcement officer or indictment, the date and place of alleged commission and county of jurisdiction.

3. "*Bureau*" means the department of public safety, division of criminal investigation and bureau of identification.

4. "*Conviction data*" means information that a person was convicted of or entered a plea of guilty to a public offense and includes the date and location of commission and place and court of conviction.

5. "*Correctional data*" means information pertaining to the status, location, and activities of persons under the supervision of the county sheriff, the Iowa department of corrections, the board of parole, or any other state or local agency performing the same or similar function, but does not include investigative, sociological, psychological, economic, or other subjective information maintained by the Iowa department of corrections or board of parole.

6. "*Criminal history data*" means any or all of the

following information maintained by the department or bureau in a manual or automated data storage system and individually identified:

- a. Arrest data.
- b. Conviction data.
- c. Disposition data.
- d. Correctional data.
- e. Adjudication data.
- f. Custody data.

7. "*Criminal investigative data*" means information collected in the course of an investigation where there are reasonable grounds to suspect that specific criminal acts have been committed by a person.

8. "*Criminal or juvenile justice agency*" means an agency or department of any level of government or an entity wholly owned, financed, or controlled by one or more such agencies or departments which performs as its principal function the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal or juvenile offenders.

9. "*Custody data*" means information pertaining to the taking into custody, pursuant to section 232.19, of a juvenile for a delinquent act which would be an aggravated misdemeanor or felony if committed by an adult, and includes the date, time, place, and facts and circumstances of the delinquent act. Custody data includes warrants for the taking into custody for all delinquent acts outstanding and not served and includes the filing of a petition pursuant to section 232.35, the date and place of the alleged delinquent act, and the county of jurisdiction.

10. "*Department*" means the department of public safety.

11. "*Disposition data*" means information pertaining to a recorded court proceeding subsequent and incidental to a public offense arrest and includes dismissal of the charge, suspension or deferral of sentence.

12. "*Individually identified*" means criminal history data which relates to a specific person by one or more of the following means of identification:

- a. Name and alias, if any.
- b. Social security number.
- c. Fingerprints.
- d. Other index cross-referenced to paragraph "a", "b", or "c."
- e. Other individually identifying characteristics.

13. "*Intelligence data*" means information on identifiable individuals compiled in an effort to anticipate, prevent, or monitor possible criminal activity.

14. "*Public offense*" as used in subsections 2, 4 and 11 does not include nonindictable offenses under either chapter 321 or local traffic ordinances.

15. "*Surveillance data*" means information on individuals, pertaining to participation in organizations, groups, meetings or assemblies, where there are no reasonable grounds to suspect involvement or participation in criminal activity by any person.

692.2 Dissemination of criminal history data — fees.

1. Except in cases in which members of the department are participating in an investigation or arrest, the department and bureau may provide copies or communicate information from criminal history data only to the following:

- a. Criminal or juvenile justice agencies.
- b. Other public agencies as authorized by the commissioner of public safety.

c. The department of human services for the purposes of section 135C.33, section 218.13, section 232.71, subsection 16, section 232.142, section 237.8, subsection 2, section 237A.5, section 237A.20, and section 600.8, subsections 1 and 2.

d. The state racing and gaming commission for the purposes of section 99D.8A.

e. The state lottery division for purposes of section 99E.9, subsection 2.

f. The Iowa department of public health for the purposes of screening employees and applicants for employment in substance abuse treatment programs which admit juveniles and are licensed under chapter 125.

g. Licensed private child-caring and child-placing agencies and certified adoption investigators for the purpose of section 237.8, subsection 2, and section 600.8, subsections 1 and 2.

h. A psychiatric medical institution for children licensed under chapter 135H for the purposes of section 237.8, subsection 2 and section 600.8, subsections 1 and 2.

i. The board of educational examiners for the purpose of carrying out duties imposed under section 272.2, subsection 14.

j. A person or the person's attorney but only with regard to the person's own criminal history data, subject to the identification and fee requirements of section 692.2, subsection 6, and section 692.5.

k. To tribal officials, tribal gaming commissions, or tribal regulatory agency members of a federally recognized Indian tribe engaged in gaming within the state, who are directly responsible for authorized gaming background investigations or licensing pursuant to the Iowa gaming compact.

l. Health care facilities licensed pursuant to chapter 135C for the purposes of section 135C.33.

2. The bureau shall maintain a list showing the individual or agency to whom the data is disseminated and the date of dissemination.

3. Persons authorized to receive information under subsection 1 shall request and may receive criminal history data only when both of the following apply:

a. The data is for official purposes in connection with prescribed duties or required pursuant to section 237.8, subsection 2 or section 237A.5.

b. The request for data is based upon name, fingerprints, or other individual identifying characteristics.

4. The provisions of this section and section 692.3 which relate to the requiring of an individually identified request prior to the dissemination or redis-

95 Acts, ch 191, §28-31

NEW subsection 1 and former subsections 1-7 renumbered as 2-8

Subsection 6, NEW paragraphs e and f

Subsection 8 amended

NEW subsection 9 and former subsections 8-13 renumbered as 10-15

semination of criminal history data do not apply to the furnishing of criminal history data to the federal bureau of investigation or to the dissemination or redissemination of information that an arrest warrant has been or will be issued, and other relevant information including, but not limited to, the offense or delinquent act and the date and place of alleged commission, individually identifying characteristics of the person to be arrested or taken into custody, and the court or jurisdiction issuing the warrant.

5. Notwithstanding other provisions of this section, the department and bureau may provide copies or communicate information from criminal history data to any youth service agency approved by the commissioner of public safety. The department shall adopt rules to provide for the qualification and approval of youth service agencies to receive criminal history data.

The criminal history data to be provided by the department and bureau to authorized youth service agencies shall be limited to information on applicants for paid or voluntary positions, where those positions would place the applicant in direct contact with children.

6. The department may charge a fee to any nonlaw-enforcement agency to conduct criminal history record checks and otherwise administer this section and other sections of the Code providing access to criminal history records. The fee shall be set by the commissioner of public safety equal to the cost incurred not to exceed twenty dollars for each individual check requested. Notwithstanding any other limitation, the department is authorized to use revenues generated from the fee to employ clerical personnel to process criminal history checks for nonlaw-enforcement purposes.

In cases in which members of the department are participating in the investigation or arrest, or where officers of other criminal or juvenile justice agencies participating in the investigation or arrest consent, the department may disseminate criminal history data and intelligence data when the dissemination complies with section 692.3.

95 Acts, ch 191, §32-34
Subsection 1, paragraph a amended
Subsection 4 amended
Unnumbered paragraph of section (last paragraph) amended

692.3 Redissemination.

1. A peace officer, criminal or juvenile justice agency, or state or federal regulatory agency shall not redisseminate criminal history data outside the agency, received from the department or bureau, unless all of the following apply:

a. The data is for official purposes in connection with prescribed duties of a criminal or juvenile justice agency.

b. The agency maintains a list of the persons receiving the data and the date and purpose of the dissemination.

c. The request for data is based upon name, fingerprints, or other individual identification characteristics.

2. Notwithstanding subsection 1, paragraph "a", the department of human services may redisseminate criminal history data obtained pursuant to section 692.2, subsection 1, paragraph "c", to persons licensed, registered, or certified under chapters 135C, 237, 237A, 238, and 600 for the purposes of section 135C.33, section 237.8, subsection 2, and section 237A.5. A person who receives information pursuant to this subsection shall not use the information other than for purposes of section 135C.33, section 237.8, subsection 2, section 237A.5, or section 600.8, subsections 1 and 2. A person who receives criminal history data pursuant to this subsection who uses the information for purposes other than those permitted by this subsection or who communicates the information to another person except for the purposes permitted by this subsection is guilty of an aggravated misdemeanor.

3. A peace officer, criminal or juvenile justice agency, or state or federal regulatory agency shall not redisseminate intelligence data outside the agency, received from the department or bureau or from any other source, except as provided in subsection 1.

4. Notwithstanding subsection 1, paragraph "a", the Iowa department of public health may redisseminate criminal history data obtained pursuant to section 692.2, subsection 1, paragraph "f", to administrators of facilities licensed under chapter 125 which admit juveniles. Persons who receive criminal history data pursuant to this subsection shall not use this information other than for the purpose of screening employees and applicants for employment in substance abuse programs which admit juveniles and are licensed under chapter 125. A person who receives criminal history data pursuant to this subsection and who uses it for any other purpose or who communicates the information to any other person other than for the purposes permitted by this subsection is guilty of an aggravated misdemeanor.

95 Acts, ch 191, §35
Subsections 1 and 3 amended

692.4 Statistics.

The department, bureau, or a criminal or juvenile justice agency may compile and disseminate criminal history data in the form of statistical reports derived from such information or as the basis of further study provided individual identities are not ascertainable.

The bureau may with the approval of the commissioner of public safety disseminate criminal history data to persons conducting bona fide research, provided the data is not individually identified.

95 Acts, ch 191, §36
Unnumbered paragraph 1 amended

692.8 Intelligence data.

Intelligence data contained in the files of the department of public safety or a criminal or juvenile justice agency may be placed within a computer data storage system, provided that access to the computer data storage system is restricted to authorized employees of the department or criminal or juvenile

justice agency. The department shall adopt rules to implement this paragraph.

Intelligence data in the files of the department may be disseminated only to a peace officer, criminal or juvenile justice agency, or state or federal regulatory agency, and only if the department is satisfied that the need to know and the intended use are reasonable. Whenever intelligence data relating to a defendant or juvenile who is the subject of a petition under section 232.35 for the purpose of sentencing or adjudication has been provided a court, the court shall inform the defendant or juvenile or the defendant's or juvenile's attorney that it is in possession of such data and shall, upon request of the defendant or juvenile or the defendant's or juvenile's attorney, permit examination of such data.

If the defendant or juvenile disputes the accuracy of the intelligence data, the defendant or juvenile shall do so by filing an affidavit stating the substance of the disputed data and wherein it is inaccurate. If the court finds reasonable doubt as to the accuracy of such information, it may require a hearing and the examination of witnesses relating thereto on or before the time set for sentencing or adjudication.

95 Acts, ch 191, §37
Section amended

692.9 Surveillance data prohibited.

No surveillance data shall be placed in files or manual or automated data storage systems by the department or bureau or by any peace officer or criminal or juvenile justice agency. Violation of the provisions of this section shall be a public offense punishable under section 692.7.

95 Acts, ch 191, §38
Section amended

692.10 Rules.

The department shall adopt rules designed to assure the security and confidentiality of all systems established for the exchange of criminal history data and intelligence data between criminal or juvenile justice agencies and for the authorization of officers or employees to access a department or agency computer data storage system in which criminal intelligence data is stored.

95 Acts, ch 191, §39
Section amended

692.11 Education program.

The department shall require an educational program for its employees and the employees of criminal or juvenile justice agencies on the proper use and control of criminal history data and intelligence data.

95 Acts, ch 191, §40
Section amended

692.12 Data processing.

Nothing in this chapter shall preclude the use of the equipment and hardware of the data processing service center for the storage and retrieval of criminal history data. Files shall be stored on the computer in such a manner as the files cannot be modified,

destroyed, accessed, changed or overlaid in any fashion by noncriminal or juvenile justice agency terminals or personnel. That portion of any computer, electronic switch or manual terminal having access to criminal history data stored in the state computer must be under the management control of a criminal or juvenile justice agency.

95 Acts, ch 191, §41
Section amended

692.13 Review.

The department shall initiate periodic review procedures designed to determine compliance with the provisions of this chapter within the department and by criminal or juvenile justice agencies and to determine that data furnished to them is factual and accurate.

95 Acts, ch 191, §42
Section amended

692.14 Systems for the exchange of criminal history data.

The department shall regulate the participation by all state and local agencies in any system for the exchange of criminal history data, and shall be responsible for assuring the consistency of such participation with the terms and purposes of this chapter.

Direct access to such systems shall be limited to such criminal or juvenile justice agencies as are expressly designated for that purpose by the department. The department shall, with respect to telecommunications terminals employed in the dissemination of criminal history data, insure that security is provided over an entire terminal or that portion actually authorized access to criminal history data.

95 Acts, ch 191, §43
Section amended

692.15 Reports to department.

1. If it comes to the attention of a sheriff, police department, or other law enforcement agency that a public offense or delinquent act has been committed in its jurisdiction, the law enforcement agency shall report information concerning the public offense or delinquent act to the department on a form to be furnished by the department not more than thirty-five days from the time the public offense or delinquent act first comes to the attention of the law enforcement agency. The reports shall be used to generate crime statistics. The department shall submit statistics to the governor, the general assembly, and the division of criminal and juvenile justice planning of the department of human rights on a quarterly and yearly basis.

2. If a sheriff, police department, or other law enforcement agency makes an arrest or takes a juvenile into custody which is reported to the department, the law enforcement agency making the arrest or taking the juvenile into custody and any other law enforcement agency which obtains custody of the arrested person or juvenile taken into custody shall furnish a disposition report to the department if the arrested person or juvenile taken into custody is

transferred to the custody of another law enforcement agency or is released without having a complaint or information or petition under section 232.35 filed with any court.

3. The law enforcement agency making an arrest and securing fingerprints pursuant to section 690.2 or taking a juvenile into custody and securing fingerprints pursuant to section 232.148 shall fill out a final disposition report on each arrest on a form and in the manner prescribed by the commissioner of public safety. The final disposition report shall be forwarded to the county attorney in the county where the arrest or taking into custody occurred.

4. The county attorney of each county shall complete the final disposition report and submit it to the department within thirty days if a preliminary information or citation is dismissed without a new charge being filed. If an indictment is returned or a county attorney's information is filed, or a petition is filed under section 232.35, the final disposition form shall be forwarded to the clerk of the district court of that county.

5. If a criminal complaint or information or petition under section 232.35 is filed in any court, the clerk shall furnish a disposition report of the case.

6. Any disposition report shall be sent to the department within thirty days after disposition on a form provided by the department.

7. The hate crimes listed in section 729A.2 are subject to the reporting requirements of this section.

95 Acts, ch 191, §44
Section amended

692.16 Review and removal.

At least every year the bureau shall review and determine current status of all Iowa arrests or takings into custody reported, which are at least one year old with no disposition data. Any Iowa arrest or taking of a juvenile into custody recorded within a computer data storage system which has no disposition data after four years shall be removed unless there is an outstanding arrest warrant or detainer on such charge.

95 Acts, ch 191, §45
Section amended

692.17 Exclusions — purposes.

Criminal history data in a computer data storage system shall not include arrest or disposition data or custody or adjudication data after the person has been acquitted or the charges dismissed. Criminal history data shall not include custody or adjudication data after the juvenile has reached twenty-one years of age, unless the juvenile was convicted of or pled guilty to a serious or aggravated misdemeanor or felony between age eighteen and age twenty-one.

For the purposes of this section, "criminal history data" includes the following:

1. In the case of an adult, information maintained by any criminal justice agency if the information otherwise meets the definition of criminal history data in section 692.1, except that source documents shall be retained.

2. In the case of a juvenile, information maintained by any criminal or juvenile justice agency if the information otherwise meets the definition of criminal history data in section 692.1. In the case of a juvenile, criminal history data and source documents, other than fingerprint records, shall not be retained.

Fingerprint cards received that are used to establish a criminal history data record shall be retained in the automated fingerprint identification system when the criminal history data record is expunged.

Criminal history data may be collected for management or research purposes.

95 Acts, ch 191, §46
Section amended

692.19 Confidential records — commissioner's responsibility.

The commissioner of public safety shall have the following responsibilities and duties:

1. Shall periodically monitor the operation of governmental information systems which deal with the collection, storage, use and dissemination of criminal history or intelligence data.

2. Shall review the implementation and effectiveness of legislation and administrative rules concerning such systems.

3. May recommend changes in said rules and legislation to the legislature and the appropriate administrative officials.

4. May require such reports from state agencies as may be necessary to perform its duties.

5. May receive and review complaints from the public concerning the operation of such systems.

6. May conduct inquiries and investigations the commissioner finds appropriate to achieve the purposes of this chapter. Each criminal or juvenile justice agency in this state and each state and local agency otherwise authorized access to criminal history data is authorized and directed to furnish to the commissioner of public safety, upon the commissioner's request, statistical data, reports, and other information in its possession as the commissioner deems necessary to implement this chapter.

7. Shall annually approve rules adopted in accordance with section 692.10 and rules to assure the accuracy, completeness and proper purging of criminal history data.

8. Shall approve all agreements, arrangements and systems for the interstate transmission and exchange of criminal history data.

95 Acts, ch 191, §47
Subsection 6 amended

692.21 Data to agency making arrest or taking juvenile into custody.

The clerk of the district court shall forward conviction and disposition data to the criminal justice agency making the arrest or taking a juvenile into custody within thirty days of final court disposition of the case.

95 Acts, ch 191, §48
Section amended

CHAPTER 692A

SEX OFFENDER REGISTRY

Applicability to persons convicted prior to July 1, 1995;
transition provisions; 95 Acts, ch 146, §17
See chapter 709C for provisions relating to sexually violent
predators (effective July 1, 1997 per section 709C.12)

692A.1 Definitions.

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

1. "*Convicted*" or "*conviction*" means a person who is found guilty of, pleads guilty to, or is sentenced or adjudicated delinquent for an act which is an indictable offense in this state or in another jurisdiction, including, but not limited to, a juvenile who has been adjudicated delinquent, but whose juvenile court records have been sealed under section 232.150, and a person who has received a deferred sentence or a deferred judgment or has been acquitted by reason of insanity. "*Convicted*" or "*conviction*" does not mean a plea, sentence, adjudication, deferral of sentence or judgment which has been reversed or otherwise set aside.

2. "*Criminal justice agency*" means an agency or department of any level of government or an entity wholly owned, financed, or controlled by one or more such agencies or departments which performs as its principal function the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders.

3. "*Criminal offense against a minor*" means any of the following criminal offenses or conduct:

a. Kidnapping of a minor, except for kidnapping of a minor in the third degree which is committed by a parent.

b. False imprisonment of a minor, except when committed by a parent.

c. Any indictable offense involving sexual conduct directed toward a minor.

d. Solicitation of a minor to engage in an illegal sex act.

e. Use of a minor in a sexual performance.

f. Solicitation of a minor to practice prostitution.

g. Any indictable offense against a minor involving sexual contact with the minor.

h. An attempt to commit an offense enumerated in this subsection.

i. Dissemination and exhibition of obscene material to minors in violation of section 728.2.

j. Admitting minors to premises where obscene material is exhibited in violation of section 728.3.

k. An indictable offense committed in another jurisdiction which would constitute an indictable offense under paragraphs "a" through "j".

4. "*Department*" means the department of public safety.

5. "*Residence*" means the place where a person sleeps, which may include more than one location, and may be mobile or transitory.

6. "*Sexually violent offense*" means any of the following indictable offenses:

a. Sexual abuse as defined under section 709.1.

b. Assault with intent to commit sexual abuse in violation of section 709.11.

c. Sexual misconduct with offenders in violation of section 709.16.

d. Any of the following offenses, if the offense involves sexual abuse or attempted sexual abuse: murder, kidnapping, or burglary.

e. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs "a" through "d" if committed in this state.

7. "*Sexual exploitation*" means sexual exploitation by a counselor or therapist under section 709.15.

95 Acts, ch 146, §1
NEW section

692A.2 Persons required to register.

1. A person who has been convicted of either a criminal offense against a minor, sexual exploitation, or a sexually violent offense shall register as provided in this chapter for a period of ten years commencing from the date of placement on probation, parole, work release, or other release from custody. A person is not required to register while incarcerated. A person who is convicted, as defined in section 692A.1, of either a criminal offense against a minor or a sexually violent offense as a result of adjudication of delinquency in juvenile court shall not be required to register as required in this chapter if the juvenile court finds that the person should not be required to register under this chapter. If a person is placed on probation, parole, or work release and the probation, parole, or work release is revoked, the ten years shall commence anew upon release from custody.

2. A person who has been convicted of an offense under the laws of this state or of another state which would qualify the person as a sexually violent predator under the federal Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, shall register as provided in this chapter for an indeterminate period terminating only upon a determination by the sentencing court that registration is no longer required.

95 Acts, ch 146, §2
NEW section

692A.3 Registration process.

1. A person required to register under this chapter shall register with the sheriff of the county of the person's residence within ten days of establishment of residence in this state or within ten days of any conviction for which the person is not incarcerated, a

release from custody, or placement on probation, parole, or work release.

2. A person required to register under this chapter shall, within ten days of changing residence within a county in this state, notify the sheriff of the county in which the person is registered of the change of address and any changes in the person's telephone number in writing on a form provided by the sheriff. The sheriff shall send a copy of the change of address to the department within three working days of receipt of notice of the address change.

3. A person required to register under this chapter shall register with the sheriff of a county in which residence has been newly established and notify the sheriff of the county in which the person was registered, within ten days of changing residence to a location outside the county in which the person was registered. Registration shall be in writing on a form provided by the sheriff and shall include the person's change of address and any changes to the person's telephone number. The sheriff shall send a copy of the change of address to the department within three working days of receipt of notice of the address change.

4. A person required to register under this chapter shall notify the sheriff of the county in which the person is registered, within ten days of changing residence to a location outside this state, of the new residence address and any changes in telephone number and shall register in the other state within the ten days, if persons are required to register under the laws of the other state. The sheriff shall send a copy of the change of address to the department within three working days of receipt of notice of the address change.

5. The collection of information by a court or releasing agency under section 692A.5 shall serve as the person's initial registration for purposes of this section. The court or releasing agency shall forward a copy of the registration to the department within three working days of completion of registration.

95 Acts, ch 146, §3
NEW section

692A.4 Verification of address.

1. The address of a person required to register under this chapter shall be verified annually as follows:

a. On a date which falls within the month in which the person was initially required to register, the department shall mail a verification form to the last reported address of the person. Verification forms shall not be forwarded to the person who is required to register under this chapter if the person no longer resides at the address, but shall be returned to the department.

b. The person shall complete and mail the verification to the department within ten days of receipt of the form.

c. The verification form shall be signed by the person, and state the address at which the person resides. If the person is in the process of changing

residences, the person shall state that fact as well as the old and new addresses or places of residence.

2. Verification of address for a person who has been convicted of an offense under the laws of this state or of another state which would qualify the person as a sexually violent predator under the federal Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, shall be accomplished in the same manner as in subsection 1, except that the verification shall be done every three months at times established by the department.

95 Acts, ch 146, §4
NEW section

692A.5 Duty to facilitate registration.

1. When a person who is required to register under this chapter is released from confinement from a jail, prison, juvenile facility, or other correctional institution or facility, or when such a person is convicted but not incarcerated, the sheriff, warden, or superintendent or, in the case of conviction without incarceration, the court shall do the following prior to release or sentencing of the convicted person:

a. Obtain fingerprints, the social security number, and a photograph of the person if fingerprints and a photograph and the social security number have not already been obtained in connection with the offense that triggers registration. A current photograph may also be required.

b. Inform the person of the duty to register.

c. Inform the person that, within ten days of changing residence, registration with the sheriff in the county in which residence is established is required, if the residence is within the state.

d. Inform the person that if the person moves the person's residence to another state, the person must give the person's new address to the sheriff's department in the county of the person's old residence within ten days of changing addresses, and that, if the other state has a registration requirement, the person is also required to register in the new state of residence, not later than ten days after establishing residence in the other state and to verify the address at least annually.

e. Require the person to read and sign a form stating that the duty of the person to register under this chapter has been explained. If the person cannot read, is unable to write, or refuses to cooperate, the duty and the form shall be explained orally and a written record maintained by the person explaining the duty and the form.

2. When a person who is required to register under this chapter is released from confinement from a jail, prison, juvenile facility, or other correctional institution or facility, or when such a person is convicted but not incarcerated, the sheriff, warden, or superintendent or, in the case of conviction without incarceration, the court shall verify that the person has completed initial registration forms, and accept the forms on behalf of the sheriff of the county of registration. The sheriff, warden, superintendent, or the court shall send the initial registration informa-

tion to the department within three working days of completion of the registration. Probation, parole, work release, or any other form of release after conviction shall not be granted unless the person has registered as required under this chapter.

3. The sheriff, warden, or superintendent or, in the case the person is placed on probation, the court shall forward one copy of the registration information to the department and to the sheriff of the county in which the person is to reside within three days after completion of the registration.

95 Acts, ch 146, §5
NEW section

692A.6 Registration fees and civil penalty for offenders.

1. At the time of filing a registration statement, or a change of registration, with the sheriff of the county of residence, a person who is required to register under this chapter shall pay a fee of ten dollars to the sheriff. If, at the time of registration, the person who is required to register is unable to pay the fee, the sheriff may allow the person time to pay the fee, permit the payment of the fee in installments, or may waive payment of the fee. Fees paid to the sheriff shall be used to defray the costs of duties related to the registration of persons under this chapter.

2. In addition to any other penalty, at the time of conviction for a public offense committed on or after July 1, 1995, which requires a person to register under this chapter, the person shall be assessed a civil penalty of two hundred dollars, to be payable in the same manner as a fine. The clerk of the district court shall transmit money collected under this subsection each month to the treasurer of state, who shall deposit ten percent of the moneys transmitted by the clerk into the court technology and modernization fund, for use for the purposes established in section 602.8108, subsection 4, paragraph "a", and deposit the balance of the moneys transmitted by the clerk into the sex offender registry fund established under section 692A.11.

3. The fees required by this section shall not be assessed against a person who has been acquitted by reason of insanity of the offense which requires registration under this chapter.

95 Acts, ch 146, §6
NEW section

692A.7 Failure to comply — penalty.

1. A willful failure to register as required under this chapter is an aggravated misdemeanor for a first offense and a class "D" felony for a second or subsequent offense. However, a person who willfully fails to register as required under this chapter and who commits a criminal offense against a minor, sexual exploitation, or a sexually violent offense is guilty of a class "C" felony. Any fine imposed for a second or subsequent offense shall not be suspended. The court shall not defer judgment or sentence for any violation of the registration requirements of this chapter. The

willful failure of a person who is on probation, parole, or work release, or any other form of release to register as required under this chapter shall result in the automatic revocation of the person's probation, parole, or work release.

2. In determining if a violation is a second or subsequent offense, a conviction for a violation of this section which occurred more than ten years prior to the date of the violation charged shall not be considered in determining that the violation charged is a second, third, or subsequent offense. Violations in any other states under sex offender registry provisions that are substantially similar to those contained in this section shall be counted as previous offenses. The court shall judicially notice the statutes of other states which are substantially equivalent to this section.

95 Acts, ch 146, §7
NEW section

692A.8 Determination of requirement to register.

1. A person who is registered under this chapter may request that the department determine whether the offense for which the person has been convicted requires the person to register under this chapter or whether the period of time during which the person is obligated to register under this chapter has expired.

2. Application for determination shall be made on forms provided by the department and accompanied by copies of sentencing or adjudicatory orders with respect to each offense for which the person asks that a determination be made.

3. The department shall, within ninety days of the filing of the request, determine whether the person is required to register under this chapter.

95 Acts, ch 146, §8
NEW section

692A.9 Registration forms.

Registration forms shall be prepared by the department and shall include the registrant's name, the registrant's social security number, the registrant's current address, and, if applicable, the registrant's telephone number. The forms may provide for the reporting of additional relevant information such as, but not limited to, fingerprints and photographs but shall not include information identifying the victim of the crime of which the registrant was convicted. Copies of blank forms shall be available upon request to any person from the sheriff.

95 Acts, ch 146, §9
NEW section

692A.10 Department duties — registry.

The department shall perform all of the following duties:

1. Develop and disseminate standard forms for use in registering of, verifying addresses of, and verifying understanding of registration requirements by persons required to register under this chapter. Forms used to verify addresses of persons

required to register under this chapter shall contain a warning against forwarding of the forms and of the requirement to return the forms if the person to whom the form is directed no longer resides at the address listed on the form or the mailing.

2. Maintain a central registry of information collected from persons required to register under this chapter, which shall be known as the sex offender registry.

3. In consultation with the attorney general, adopt rules under chapter 17A which list specific offenses under present and former law which constitute criminal offenses against a minor under this chapter.

4. Adopt rules under chapter 17A, as necessary, to ensure compliance with registration and verification requirements of this chapter, to provide guidelines for persons required to assist in obtaining registry information, and to provide a procedure for the dissemination of information contained in the registry. The procedure for the dissemination of information shall include, but not be limited to, practical guidelines for use by criminal justice agencies in determining when public release of information contained in the registry is appropriate and a requirement that if a member of the general public requests information regarding a specific individual in the manner provided in section 692A.13, subsection 6, the information shall be released. The department, in developing the procedure, shall consult with associations which represent the interests of law enforcement officers. Rules adopted shall also include a procedure for removal of information from the registry upon the reversal or setting aside of a conviction of a person who is registered under this chapter.

95 Acts, ch 146, §10
NEW section

692A.11 Sex offender registry fund.

A sex offender registry fund is established as a separate fund within the state treasury under the control of the department. The fund shall consist of moneys received as a result of the imposition of the penalty imposed under section 692A.6 and other funds allocated for purposes of establishing and maintaining the sex offender registry, conducting research and analysis related to sex crimes and offenders, and to perform other duties required under this chapter. Notwithstanding section 8.33, unencumbered or unobligated moneys and any interest remaining in the fund on June 30 of any fiscal year shall not revert to the general fund of the state, but shall remain available for expenditure in subsequent fiscal years.

95 Acts, ch 146, §11
NEW section

692A.12 Duties of the sheriff.

The sheriff of each county shall comply with the requirements of this chapter and rules adopted by the department pursuant to this chapter.

95 Acts, ch 146, §12
NEW section

692A.13 Availability of records.

Information contained in the sex offender registry is a confidential record under section 22.7, subsection 9, and shall only be disseminated or redisseminated as follows:

1. The department or a sheriff may disclose information to criminal justice agencies for law enforcement or prosecution purposes.

2. The department may disclose information to government agencies which are conducting confidential background investigations.

3. The department or a criminal justice agency with case-specific authorization from the department may release relevant information from the registry regarding a criminal offense against a minor, sexual exploitation, or a sexually violent offense, that is necessary to protect the public concerning a specific person who is required to register under this chapter.

4. The department may disseminate departmental analyses of information contained in the sex offender registry to persons conducting bona fide research, if the data does not contain individually identified information, as defined under section 692.1.

5. Criminal history information contained in the registry may be released as provided in chapter 692 or used by criminal justice agencies as an index for purposes of locating a relevant conviction record.

6. A sheriff shall release information regarding a specific person who is required to register under this chapter to a member of the general public if the person requesting the information gives the person's name and address in writing, states the person's reason for requesting the information, and provides the sheriff with the name and address of the person about whom the information is sought. The sheriff shall maintain a record of persons requesting information from the registry. The record of persons requesting information from the registry is a confidential record under section 22.7, subsection 9, unless the person requesting the information from the registry requests that the record of the information request be a public record.

7. Notwithstanding sections 232.147 through 232.151, records concerning convictions for criminal offenses against a minor or sexually violent offenses which are committed by a minor may be released in the same manner as records of convictions of adults.

95 Acts, ch 146, §13
NEW section

692A.14 Cooperation with registration.

Each agency of state and local government which possesses information relevant to requirements that a person register under this chapter shall provide that information to the court or the department upon request. All confidential records provided under this section shall remain confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information.

95 Acts, ch 146, §14
NEW section

692A.15 Immunity for good faith conduct.

Criminal justice agencies, officials, and employees of criminal justice agencies and state agencies and their employees shall be immune from liability for

acts or omissions arising from a good faith effort to comply with this chapter.

95 Acts, ch 146, §15
NEW section

CHAPTER 708**ASSAULT****708.1 Assault defined.**

A person commits an assault when, without justification, the person does any of the following:

1. Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.

2. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

3. Intentionally points any firearm toward another, or displays in a threatening manner any dangerous weapon toward another.

Provided, that where the person doing any of the above enumerated acts, and such other person, are voluntary participants in a sport, social or other activity, not in itself criminal, and such act is a reasonably foreseeable incident of such sport or activity, and does not create an unreasonable risk of serious injury or breach of the peace, the act shall not be an assault.

Provided, that where the person doing any of the above enumerated acts is employed by a school district or accredited nonpublic school, or is an area education agency staff member who provides services to a school or school district, and intervenes in a fight or physical struggle, or other disruptive situation, that takes place in the presence of the employee or staff member performing employment duties in a school building, on school grounds, or at an official school function regardless of the location, the act shall not be an assault, whether the fight or physical struggle or other disruptive situation is between students or other individuals, if the degree and the force of the intervention is reasonably necessary to restore order and to protect the safety of those assembled.

95 Acts, ch 191, §49
NEW unnumbered paragraph 3

708.2A Domestic abuse assault — mandatory minimums, penalties enhanced — extension of no-contact order.

1. For the purposes of this chapter, "domestic abuse assault" means an assault, as defined in section 708.1, which is domestic abuse as defined in section 236.2.

2. On a first offense of domestic abuse assault, the person commits:

a. A simple misdemeanor for a domestic abuse assault, except as otherwise provided.

b. A serious misdemeanor, if the domestic abuse assault causes bodily injury or mental illness.

c. An aggravated misdemeanor, if the domestic abuse assault is committed with the intent to inflict a serious injury upon another, or if the person uses or displays a dangerous weapon in connection with the assault. This paragraph does not apply if section 708.6 or 708.8 applies.

3. Except as otherwise provided in subsection 2, on a second or subsequent domestic abuse assault, a person commits:

a. A serious misdemeanor, if the first offense was classified as a simple misdemeanor, and the second offense would otherwise be classified as a simple misdemeanor.

b. An aggravated misdemeanor, if the first offense was classified as a simple or aggravated misdemeanor, and the second offense would otherwise be classified as a serious misdemeanor, or the first offense was classified as a serious or aggravated misdemeanor, and the second offense would otherwise be classified as a simple or serious misdemeanor.

A conviction for, deferred judgment for, or plea of guilty to, a violation of this section which occurred more than six years prior to the date of the violation charged shall not be considered in determining that the violation charged is a second or subsequent offense. For the purpose of determining if a violation charged is a second or subsequent offense, deferred judgments issued pursuant to section 907.3 for violations of section 708.2 or this section, which were issued on domestic abuse assaults, and convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to the offenses defined in this section and can therefore be considered corresponding statutes. Each previous violation on which conviction or deferral of judgment was entered prior to the date of the offense charged shall be considered and counted as a separate previous offense. An offense shall be considered a prior offense regardless of whether it was committed upon the same victim.

4. A person convicted of violating this section shall serve a minimum term of two days of the sentence imposed by law, and shall not be eligible for suspension of the minimum sentence. The minimum term shall be served on consecutive days. The court shall not impose a fine in lieu of the minimum sentence, although a fine may be imposed in addition to the minimum sentence. This section does not prohibit the court from sentencing and the defendant from serving the maximum term of confinement or from paying the maximum fine permitted pursuant to chapters 902 and 903, and does not prohibit the court from entering a deferred judgment or sentence pursuant to section 907.3, if the defendant has not previously received a deferred sentence or judgment for a violation of section 708.2 or this section which was issued on a domestic abuse assault. However, once the defendant has received one deferred sentence or judgment involving a violation of section 708.2 or this section which was issued on a domestic abuse assault, the defendant shall not be eligible to receive another deferred sentence or judgment for a violation of this section.

5. If a defendant is convicted for, receives a deferred judgment for, or pleads guilty to a violation of this section, the court shall modify the no-contact order issued upon initial appearance in the manner provided in section 236.14, regardless of whether the defendant is placed on probation.

6. The clerk of the district court shall provide notice and copies of a judgment entered under this section to the applicable law enforcement agencies and the twenty-four hour dispatcher for the law enforcement agencies, in the manner provided for protective orders under section 236.5. The clerk shall provide notice and copies of modifications of the judgment in the same manner.

7. In addition to the mandatory minimum term of confinement imposed by this section, the court shall order the defendant to participate in a batterers' treatment program as required under section 708.2B. In addition, as a condition of deferring judgment or sentence pursuant to section 907.3, the court shall order the defendant to participate in a batterers' treatment program. The clerk of the district court shall send a copy of the judgment or deferred judgment to the judicial district department of correctional services.

95 Acts, ch 90, §1
Subsection 2, paragraph b amended

708.2B Treatment of domestic abuse offenders.

As used in this section, "district department" means a judicial district department of correctional services, established pursuant to section 905.2. A person convicted of, or receiving a deferred judgment for, domestic abuse assault shall report to the district department in order to participate in a batterers' treatment program for domestic abuse offenders. Participation in the batterers' treatment program shall not require a person to be placed on probation,

but a person on probation may participate in the program. The district departments may contract for services in completing the duties relating to the batterers' treatment programs. The district departments shall assess the fees for participation in the program, and shall either collect or contract for the collection of the fees to recoup the costs of treatment, but may waive the fee or collect a lesser amount upon a showing of cause. The fees shall be used by each of the district departments or contract service providers for the establishment, administration, coordination, and provision of direct services of the batterers' treatment programs.

District departments or contract service providers shall receive upon request peace officers' investigative reports regarding persons participating in programs under this section. The receipt of reports under this section shall not waive the confidentiality of the reports under section 22.7.

95 Acts, ch 180, §15
NEW unnumbered paragraph 2

708.2C Assault in violation of individual rights — penalties.

1. For the purposes of this chapter, "assault in violation of individual rights" means an assault, as defined in section 708.1, which is a hate crime as defined in section 729A.2.

2. A person who commits an assault in violation of individual rights, with the intent to inflict a serious injury upon another, is guilty of a class "D" felony.

3. A person who commits an assault in violation of individual rights, and who causes bodily injury or mental illness, is guilty of an aggravated misdemeanor.

4. A person who commits an assault in violation of individual rights and uses or displays a dangerous weapon in connection with the assault, is guilty of a class "D" felony.

5. Any other assault in violation of individual rights, except as otherwise provided, is a serious misdemeanor.

95 Acts, ch 90, §2
Subsection 3 amended

708.3A Assaults on peace officers, fire fighters, and emergency care providers.

1. A person who commits an assault, as defined in section 708.1, against a peace officer, basic emergency medical care provider under chapter 147,* an advanced emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, with the knowledge that the person against whom the assault is committed is a peace officer, basic emergency medical care provider under chapter 147, an advanced emergency medical care provider under chapter 147A, or fire fighter and the intent to inflict a serious injury upon the peace officer, basic emergency medical care provider under chapter 147, an advanced emergency medical care provider under chapter 147A, or fire fighter, is guilty of a class "D" felony.

2. A person who commits an assault, as defined in section 708.1, against a peace officer, basic emergency medical care provider under chapter 147, an advanced emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, who knows that the person against whom the assault is committed is a peace officer, basic emergency medical care provider under chapter 147, an advanced emergency medical care provider under chapter 147A, or fire fighter and who uses or displays a dangerous weapon in connection with the assault, is guilty of a class "D" felony.

3. A person who commits an assault, as defined in section 708.1, against a peace officer, basic emergency medical care provider under chapter 147, an advanced emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, who knows that the person against whom the assault is committed is a peace officer, basic emergency medical care provider under chapter 147, an

advanced emergency medical care provider under chapter 147A, or fire fighter, and who causes bodily injury or disabling mental illness, is guilty of an aggravated misdemeanor.

4. Any other assault, as defined in section 708.1, committed against a peace officer, basic emergency medical care provider under chapter 147, an advanced emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, by a person who knows that the person against whom the assault is committed is a peace officer, basic emergency medical care provider under chapter 147, an advanced emergency medical care provider under chapter 147A, or fire fighter, is a serious misdemeanor.

95 Acts, ch 90, §3
*Provisions formerly in ch 147 relating to emergency medical care providers are now combined into ch 147A; see 95 Acts, ch 41; corrective legislation is pending

NEW section

CHAPTER 709

SEXUAL ABUSE

709.17 Polygraph examinations of victims or witnesses — limitations.

A criminal or juvenile justice agency shall not require a person claiming to be a victim of sexual abuse or claiming to be a witness regarding the sexual abuse of another person to submit to a polygraph or similar examination as a precondition to the agency conducting an investigation into the matter. An agency wishing to perform a polygraph examination of a person claiming to be a victim or witness shall inform the person of the following:

1. That taking the polygraph examination is voluntary.

2. That the results of the examination are not admissible in court.

3. That the person's decision to submit or refuse a polygraph examination will not be the sole basis for a decision by the agency not to investigate the matter.

An agency which declines to investigate an alleged case of sexual abuse following a decision by a person claiming to be a victim not to submit to a polygraph examination shall provide to that person, in writing, the reasons why the agency did not pursue the investigation at the request of the person.

95 Acts, ch 86, §1
NEW section

CHAPTER 709A

CONTRIBUTING TO JUVENILE DELINQUENCY

709A.6 Using a juvenile to commit certain offenses.

1. As used in this section, unless the context otherwise requires, "profit" means a monetary gain, monetary advantage, or monetary benefit.

2. It is unlawful for a person to act with, enter into a common scheme or design with, conspire with, recruit or use a person under the age of eighteen,

through threats, monetary payment, or other means, to commit an indictable offense for the profit of the person acting with, entering into the common scheme or design with, conspiring with, recruiting or using the juvenile. A person who violates this section commits a class "C" felony.

95 Acts, ch 191, §50
Subsection 2 amended

CHAPTER 709B

TESTS FOR CERTAIN SEXUAL OFFENDERS

709B.3 Testing, reporting, and counseling—penalties.

1. The physician or other practitioner who orders the test of a convicted offender for HIV under this chapter shall disclose the results of the test to the convicted offender and to the victim counselor or a person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, who shall disclose the results to the petitioner.

2. All testing under this chapter shall be accompanied by pretest and posttest counseling as required under section 141.22.

3. Subsequent testing arising out of the same incident of exposure shall be conducted in accordance with the procedural and confidentiality requirements of this chapter.

4. Results of a test performed under this chapter, except as provided in subsection 6, shall be disclosed only to the physician or other practitioner who orders the test of the convicted offender, the convicted offender, the victim, the victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, the physician of the victim if requested by the victim, and the parent, guardian, or custodian of the victim, if the victim is a minor. Results of a test performed under this chapter shall not be disclosed to any other person without the written, informed consent of the convicted offender. A person to whom the results of a test have been disclosed under this chapter is subject to the confidentiality provisions of section 141.23, and shall not disclose the results to another person except as authorized by section 141.23, subsection 1.

5. Notwithstanding subsection 4, test results shall not be disclosed to a convicted offender who elects against disclosure.

6. If testing is ordered under this chapter, the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole if the physician or other practitioner who ordered the initial test of the convicted offender certifies that, based upon prevailing scientific opinion regarding the maximum period during which the results of an HIV-related test may be negative for a person after being HIV-infected, additional testing is necessary to determine whether the convicted offender was HIV-infected at the time the sexual assault was perpetrated. The results of the test conducted pursuant to this subsection shall be released only to the physician or other practitioner who orders the test of the convicted offender, the convicted offender, the victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, who shall disclose the results to the petitioner, and the physician of the victim, if requested by the victim.

7. The court shall not consider the disclosure of an alleged offender's serostatus to an alleged victim,

prior to conviction, as a basis for a reduced plea or reduced sentence.

8. The fact that an HIV-related test was performed under this chapter and the results of the test shall not be included in the convicted offender's medical or criminal record unless otherwise included in department of corrections records.

9. The fact that an HIV-related test was performed under this chapter and the results of the test shall not be used as a basis for further prosecution of a convicted offender in relation to the incident which is the subject of the testing, to enhance punishments, or to influence sentencing.

10. If the serologic status of a convicted offender, which is conveyed to the victim, is based upon an HIV-related test other than a test which is authorized as a result of the procedures established in this chapter, legal protections which attach to such testing shall be the same as those which attach to an initial test under this chapter, and the rights to a prediscovery hearing and to appeal provided under this chapter shall apply.

11. HIV-related testing required under this chapter shall be conducted by the state hygienic laboratory.

12. Notwithstanding the provisions of this chapter requiring initial testing, if a petition is filed with the court under section 709B.2 requesting an order for testing and the order is granted, and if a test has previously been performed on the convicted offender while under the control of the department of corrections, the test results shall be provided in lieu of the performance of an initial test of the convicted offender, in accordance with this chapter.

13. In addition to the counseling received by a victim, referral to appropriate health care and support services shall be provided.

14. In addition to persons to whom disclosure of the results of a convicted offender's HIV-related test results is authorized under this chapter, the victim may also disclose the results to the victim's spouse, persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault, or members of the victim's family within the third degree of consanguinity.

15. A person to whom disclosure of a convicted offender's HIV-related test results is authorized under this chapter shall not disclose the results to any other person for whom disclosure is not authorized under this chapter. A person who intentionally or recklessly makes an unauthorized disclosure under this chapter is subject to a civil penalty of one thousand dollars. The attorney general or the attorney general's designee may maintain a civil action to enforce this chapter. Proceedings maintained under this subsection shall provide for the anonymity of the test subject and all documentation shall be maintained in a confidential manner.

CHAPTER 709C

SEXUALLY VIOLENT PREDATORS

Chapter effective July 1, 1997; see section 709C.12 and 95 Acts, ch 144, §6
Sex offender registry; see chapter 692A

709C.2A Notification of release.

Within six months of the impending release of an inmate who has been convicted of a sexually violent offense, the department of corrections shall notify the county attorney for the county in which the person was convicted and the attorney general of the impending release.

95 Acts, ch 144, §1
Effective July 1, 1997; see §709C.12
NEW section

709C.5 Trial — rights of parties.

Not later than forty-five days after the filing of a petition pursuant to section 709C.3, the court shall conduct a trial in the county in which the person was convicted of a sexually violent offense to determine whether the person is a sexually violent predator. At all stages of the proceedings under this chapter, any person subject to this chapter shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist the person. If a person is subjected to an examination under this chapter, the person may retain experts or professional persons to perform an examination on the person's behalf. The person may be examined by a qualified expert or professional person of the person's choosing, and the expert or professional shall have reasonable access to the person for the purpose of the examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf. The person, the county attorney or the attorney general, or the judge shall have the right to demand that the trial be before a jury, if the person is an adult or a juvenile who has been waived to the

district court. If no demand is made, or if the person is a juvenile who has not been waived to the district court, the trial shall be to the court or the juvenile court as applicable.

95 Acts, ch 144, §2
Effective July 1, 1997; see §709C.12
Section amended

709C.11 Funding.

All costs incurred by a county pursuant to sections 709C.1 through 709C.10, including, but not limited to, the cost of filing a sexually violent predator petition under section 709C.3; the cost of an evaluation under section 709C.4; the cost of participating in the sexually violent predator trial on behalf of the petitioner under section 709C.5; the cost of court-appointed counsel for indigents under section 709C.5; the cost of qualified experts or professionals retained under section 709C.5; the cost of control, care, and treatment at a facility operated by the department of human services under section 709C.6; the cost of annual examinations under section 709C.7; the cost of representing the state in a petition for release hearing under section 709C.8; and the cost of having the petitioner examined by an expert or professional person under section 709C.8, shall be paid by the state.

95 Acts, ch 144, §3
Effective July 1, 1997; see §709C.12
NEW section

709C.12 Effective date.

This chapter takes effect July 1, 1997, and applies to persons convicted of a sexually violent offense on or after July 1, 1997.

95 Acts, ch 144, §4; 95 Acts, ch 209, §28
Effective July 1, 1997
NEW section
Section amended

CHAPTER 716B

HAZARDOUS WASTE OFFENSES

716B.3 Unlawful transportation of hazardous waste — penalties.

A person who knowingly or with reason to know, transports or causes to be transported any hazardous waste to any location other than a facility that is authorized to receive, treat, store, or dispose of the hazardous waste under rules adopted pursuant to the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901-6992, is guilty of an aggravated misdemeanor and upon conviction shall be punished

by a fine of not more than twenty-five thousand dollars for each day of violation or imprisonment for not more than two years, or both. If the conviction is for a violation committed after a first conviction under this section, the person is guilty of a class "D" felony and shall be punished by a fine of not more than fifty thousand dollars for each day of violation or imprisonment for not more than five years, or both.

95 Acts, ch 49, §24
Section amended

CHAPTER 717

INJURY TO LIVESTOCK

717.1 Definitions.

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

1. "*Law enforcement officer*" means a regularly employed member of a police force of a city or county, including a sheriff, who is responsible for the prevention and detection of crime and the enforcement of the criminal laws of this state.

2. "*Livestock*" means an animal belonging to the bovine, caprine, equine, ovine, or porcine species, ostriches, rheas, emus; farm deer, as defined in section 481A.1; or poultry.

3. "*Livestock care provider*" means a person des-

ignated by a local authority to provide care to livestock which is rescued by the local authority pursuant to section 717.2A.

4. "*Local authority*" means a city as defined in section 362.2 or a county as provided in chapter 331.

5. "*Maintenance*" means to provide on-site or off-site care to neglected livestock.

6. "*Sustenance*" means food, water, or a nutritional formulation customarily used in the production of livestock.

95 Acts, ch 43, §14; 95 Acts, ch 134, §6
See Code editor's note to §13B.8
Subsection 2 amended

CHAPTER 717A

OFFENSES RELATING TO ANIMAL FACILITIES

717A.1 Animal facilities — civil action — criminal penalties.

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

a. "*Animal*" means a warm-blooded or cold-blooded animal, including an animal belonging to the bovine, canine, feline, equine, ovine, or porcine species, or ostriches, rheas, or emus; an animal which belongs to a species of poultry or fish; or an animal which is an invertebrate.

b. "*Animal facility*" means any of the following:

(1) A location where an animal is maintained for agricultural production, including an operation dedicated to farming as defined in section 9H.1, a livestock market, exhibition, or a vehicle used to transport the animal.

(2) A location where an animal is maintained for educational or scientific purposes, including an institution as defined in section 145B.1, a research facility as defined in section 162.2, an exhibition, or a vehicle used to transport the animal.

(3) A location which is a facility operated by a person licensed to prescribe veterinary medicine pursuant to chapter 169.

(4) A pound as defined in section 162.2.

(5) An animal shelter as defined in section 162.2.

(6) A pet shop as defined in section 162.2.

(7) A boarding kennel as defined in section 162.2.

(8) A commercial kennel as defined in section 162.2.

c. "*Consent*" means express or apparent assent by a person authorized to provide such assent.

d. "*Deprive*" means to do any of the following:

(1) Withhold an animal or property belonging to or maintained by an animal facility for a period of

time sufficient to significantly reduce the value or enjoyment of the animal or property.

(2) Withhold an animal or property for ransom or upon condition to restore the animal or property in return for compensation.

(3) Dispose of an animal or property of an owner in a manner that makes recovery of the animal or property by the owner unlikely.

e. "*Maintain*" means to keep, handle, house, exhibit, breed, or offer for sale, or sell an animal.

f. "*Owner*" means a person who has a legal interest in an animal or property or who is authorized by the holder of the legal interest to act on the holder's behalf.

2. A person shall not, without the consent of the owner, do any of the following:

a. Willfully destroy property of an animal facility, or injure an animal maintained at an animal facility.

b. Exercise control over an animal facility including property of the animal facility, or an animal maintained at an animal facility, with intent to deprive the animal facility of an animal or property.

c. Enter onto or into an animal facility, or remain on or in an animal facility, if the person has notice that the facility is not open to the public, if the person has an intent to do one of the following:

(1) Disrupt operations conducted at the animal facility, if the operations directly relate to agricultural production, animal maintenance, educational or scientific purposes, or veterinary care.

(2) Injure an animal maintained at the animal facility.

A person has notice that an animal facility is not open to the public if the person is provided notice before entering onto or into the facility, or the person

refuses to immediately depart from the facility after being informed to leave. The notice may be in the form of a written or verbal communication by the owner, a fence or other enclosure designed to exclude intruders or contain animals, or a sign posted which is reasonably likely to come to the attention of an intruder and which indicates that entry is forbidden.

3. A person suffering damages resulting from an action which is in violation of subsection 2 may bring an action in the district court against the person causing the damage to recover all of the following:

a. An amount equaling three times all actual and consequential damages.

b. Court costs and reasonable attorney fees.

4. A person violating this section is guilty of the following penalties:

a. A person who violates subsection 2, paragraph "a", is guilty of a class "C" felony if the injury to an animal or damage to property exceeds fifty thousand dollars, a class "D" felony if the injury to an animal or damage to property exceeds five hundred dollars

but does not exceed fifty thousand dollars, an aggravated misdemeanor if the injury to an animal or damage to property exceeds one hundred dollars but does not exceed five hundred dollars, a serious misdemeanor if the injury to an animal or damage to property exceeds fifty dollars but does not exceed one hundred dollars, or a simple misdemeanor if the injury to an animal or damage to property does not exceed fifty dollars.

b. A person who violates subsection 2, paragraph "b", is guilty of a class "D" felony.

c. A person who violates subsection 2, paragraph "c", is guilty of an aggravated misdemeanor.

5. This section does not prohibit any conduct of a person holding a legal interest in an animal or property which is superior to the interest held by a person suffering from damages resulting from the conduct. The section does not apply to activities of a governmental agency.

95 Acts, ch 43, §15

Subsection 1, paragraph a amended

CHAPTER 717B

INJURY TO ANIMALS OTHER THAN LIVESTOCK

717B.3 Animal neglect.

1. A person who impounds or confines, in any place, an animal is guilty of animal neglect, if the person does any of the following: fails to supply the animal during confinement with a sufficient quantity of food or water; fails to provide a confined dog or cat with adequate shelter; or tortures, deprives of necessary sustenance, mutilates, beats, or kills an animal by any means which causes unjustified pain, distress, or suffering.

2. This section does not apply to an institution, as defined in section 145B.1, or a research facility, as defined in section 162.2, provided that the institution or research facility performs functions within the scope of accepted practices and disciplines associated with the institution or research facility.

3. A person who negligently or intentionally commits the offense of animal neglect is guilty of a simple misdemeanor. A person who intentionally commits the offense of animal neglect which results in serious injury to or the death of an animal is guilty of a serious misdemeanor.

95 Acts, ch 49, §25

Subsection 3 amended

717B.9 Injury or interference with a police service dog.

1. A person who knowingly, and willfully or maliciously torments, strikes, administers a nonpoison-

ous desensitizing substance to, or otherwise interferes with a police service dog, without inflicting serious injury on the dog, commits a serious misdemeanor.

2. A person who knowingly, and willfully or maliciously does any of the following commits a class "D" felony:

a. Tortures a police service dog.

b. Injures, so as to disfigure or disable, a police service dog.

c. Sets a booby trap device for purposes of injuring, so as to disfigure or disable, or killing a police service dog.

d. Pays or agrees to pay a bounty for purposes of injury, so as to disfigure or disable, or killing a police service dog.

e. Kills a police service dog.

f. Administers poison to a police service dog.

3. As used in this section, "police service dog" means a dog used by a peace officer or correctional officer in the performance of the officer's duties, whether or not the dog is on duty.

4. This section does not apply to a peace officer or veterinarian who terminates the life of such a dog for the purpose of relieving the dog of undue pain or suffering, or to a person who justifiably acts in defense of self or another.

95 Acts, ch 107, §1

Subsections 1, 2, and 3 amended

CHAPTER 718

OFFENSES AGAINST THE GOVERNMENT

718.6 False reports to or communications with public safety entities.

1. A person who reports or causes to be reported false information to a fire department, a law enforcement authority, or other public safety entity, knowing that the information is false, or who reports the alleged occurrence of a criminal act knowing the act did not occur, commits a simple misdemeanor, unless the alleged criminal act reported is a serious or aggravated misdemeanor or felony, in which case the person commits a serious misdemeanor.

2. A person who telephones an emergency 911 communications center knowing that the person is

not reporting an emergency or otherwise needing emergency information or assistance commits a simple misdemeanor.

3. A person who knowingly provides false information to a law enforcement officer who enters the information on a citation commits a simple misdemeanor, unless the criminal act for which the citation is issued is a serious or aggravated misdemeanor or felony, in which case the person commits a serious misdemeanor.

95 Acts, ch 89, §1
Section amended

CHAPTER 719

OBSTRUCTING JUSTICE

719.1 Interference with official acts.

1. A person who knowingly resists or obstructs anyone known by the person to be a peace officer, basic emergency medical care provider under chapter 147,* an advanced emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, in the performance of any act which is within the scope of the lawful duty or authority of that officer, basic emergency medical care provider under chapter 147, an advanced emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, or who knowingly resists or obstructs the service or execution by any authorized person of any civil or criminal process or order of any court, commits a serious misdemeanor. However, if a person commits an interference with official acts, as defined in this subsection, and in so doing inflicts bodily injury other than serious injury, that person commits an aggravated misdemeanor. If a person commits an interference with official acts, as defined in this subsection, and in so doing inflicts or attempts to inflict serious injury, or displays a dangerous weapon, as defined in section 702.7, or is armed with a firearm, that person commits a class "D" felony.

2. A person under the custody, control, or supervision of the department of corrections who know-

ingly resists, obstructs, or interferes with a correctional officer, agent, employee, or contractor, whether paid or volunteer, in the performance of the person's official duties, commits a serious misdemeanor. If a person violates this subsection and in so doing commits an assault, as defined in section 708.1, the person commits an aggravated misdemeanor. If a person violates this subsection and in so doing inflicts or attempts to inflict bodily injury other than serious injury to another, displays a dangerous weapon, as defined in section 702.7, or is armed with a firearm, the person commits a class "D" felony. If a person violates this subsection and uses or attempts to use a dangerous weapon, as defined in section 702.7, or inflicts serious injury to another, the person commits a class "C" felony.

3. The terms "*resist*" and "*obstruct*", as used in this section, do not include verbal harassment unless the verbal harassment is accompanied by a present ability and apparent intention to execute a verbal threat physically.

95 Acts, ch 90, §4

*Provisions formerly in ch 147 relating to emergency medical care providers are now combined into ch 147A; see 95 Acts, ch 41; corrective legislation is pending

Subsection 1 amended

CHAPTER 723A

CRIMINAL STREET GANGS

723A.1 Definitions.

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

1. "*Criminal acts*" means any of the following or any combination of the following:

- a. An offense constituting a violation of section 124.401 involving a controlled substance, a counterfeit substance, or a simulated controlled substance.
 - b. An offense constituting a violation of chapter 711 involving a robbery or extortion.
 - c. An offense constituting a violation of section 708.6 involving an act of terrorism.
 - d. An offense constituting a violation of section 708.8.
 - e. An offense constituting a violation of section 720.4.
 - f. Any other offense constituting a forcible felony as defined in section 702.11.
 - g. An offense constituting a violation of chapter 724.
2. "*Criminal street gang*" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more criminal acts, which has an identifiable name or

identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

3. "*Pattern of criminal gang activity*" means the commission, attempt to commit, conspiring to commit, or solicitation of two or more criminal acts, provided the criminal acts were committed on separate dates or by two or more persons who are members of, or belong to, the same criminal street gang.

95 Acts, ch 191, §51
Subsection 1, NEW paragraph g

723A.3 Gang recruitment — penalty.

1. A person who solicits, recruits, entices, or intimidates a minor to join a criminal street gang commits a class "C" felony.

2. A person who conspires to solicit, recruit, entice, or intimidate a minor to join a criminal street gang commits a class "D" felony.

95 Acts, ch 191, §52
NEW section

CHAPTER 724

WEAPONS

724.4B Carrying weapons on school grounds — penalty — exceptions.

1. A person who goes armed with, carries, or transports a firearm of any kind, whether concealed or not, on the grounds of a school commits a class "D" felony. For the purposes of this section, "*school*" means a public or nonpublic school as defined in section 280.2.

2. Subsection 1 does not apply to the following:

- a. A person listed under section 724.4, subsection 4, paragraphs "b" through "f" or "j".
- b. A person who has been specifically authorized by the school to go armed, carry, or transport a firearm on the school grounds, including for purposes of conducting an instructional program regarding firearms.

95 Acts, ch 191, §53
NEW section

724.6 Professional permit to carry weapons.

1. A person may be issued a permit to carry weapons when the person's employment in a private investigation business or private security business licensed under chapter 80A, or a person's employment as a peace officer, correctional officer, security guard, bank messenger or other person transporting property of a value requiring security, or in police work, reasonably justifies that person going armed. The permit shall be on a form prescribed and published by the commissioner of public safety, shall

identify the holder, and shall state the nature of the employment requiring the holder to go armed. A permit so issued, other than to a peace officer, shall authorize the person to whom it is issued to go armed anywhere in the state, only while engaged in the employment, and while going to and from the place of the employment. A permit issued to a certified peace officer shall authorize that peace officer to go armed anywhere in the state at all times. Permits shall expire twelve months after the date when issued except that permits issued to peace officers and correctional officers are valid through the officer's period of employment unless otherwise canceled. When the employment is terminated, the holder of the permit shall surrender it to the issuing officer for cancellation.

2. Notwithstanding subsection 1, fire fighters, as defined in section 411.1, subsection 9, airport fire fighters included under section 97B.49, subsection 16, paragraph "b", subparagraph (2), emergency rescue technicians, and emergency medical care providers, as defined in section 147A.1, shall not, as a condition of employment, be required to obtain a permit under this section. However, the provisions of this subsection shall not apply to a person designated as an arson investigator by the chief fire officer of a political subdivision.

95 Acts, ch 41, §26
Subsection 2 amended

CHAPTER 727

HEALTH, SAFETY AND WELFARE

727.10 Exhibiting persons.

A person shall not exhibit, place on exhibition, or cause to be exhibited any person without the permission of the person exhibited or the person's parent or guardian. A parent or guardian of an exhibited

person shall not receive compensation from the exhibition. A person who violates this section commits a serious misdemeanor.

95 Acts, ch 168, §1
Section amended

CHAPTER 729

INFRINGEMENT OF INDIVIDUAL RIGHTS

729.1 Religious test.

Any violation of section 4, Article I of the Constitution of Iowa is hereby declared to be a simple misdemeanor unless a greater penalty is otherwise provided by law.

95 Acts, ch 49, §26
Section amended

729.3 Penalty.

Any person, agency, bureau, corporation, or association that violates provisions of section 729.2 shall be guilty of a simple misdemeanor.

95 Acts, ch 49, §27
Section amended

CHAPTER 803

JURISDICTION OF PUBLIC OFFENSES AND PLACE OF TRIAL

803.1 State criminal jurisdiction.

1. A person is subject to prosecution in this state for an offense which the person commits within or outside this state, by the person's own conduct or that of another for which the person is legally accountable, if:

a. The offense is committed either wholly or partly within this state.

b. Conduct of the person outside the state constitutes an attempt to commit an offense within this state.

c. Conduct of the person outside the state constitutes a conspiracy to commit an offense within this state.

d. Conduct of the person within this state constitutes an attempt, solicitation or conspiracy to commit an offense in another jurisdiction, which conduct is punishable under the laws of both this state and such other jurisdiction.

2. An offense may be committed partly within this state if conduct which is an element of the offense, or a result which constitutes an element of the offense, occurs within this state. If the body of a murder victim is found within the state, the death is presumed to have occurred within the state. If a kidnapping victim, or the body of a kidnapping victim, is found within the state, the confinement or removal of the victim from one place to another is presumed to have occurred within the state.

3. An offense which is based on an omission to perform a duty imposed upon a person by the law of this state is committed within the state, regardless of the location of the person at the time of the omission.

4. The jurisdiction of the criminal court includes the prosecution of any individual arrested who is eighteen years of age or older and who is charged with committing a criminal offense. If the individual is alleged to have committed the offense prior to having reached the age of eighteen, that individual or the county attorney may petition the criminal court to transfer the matter to juvenile court, pursuant to section 803.5.

95 Acts, ch 178, §1
Subsection 2 amended

803.6 Transfer of jurisdiction — juvenile.

1. The court, in the case of a juvenile who is alleged to have committed a criminal offense listed in section 232.8, subsection 1, paragraph "c", may direct a juvenile court officer to provide a report regarding whether the child should be transferred to juvenile court for adjudication and disposition as a juvenile.

2. If the court believes that transfer may be appropriate the court shall hold a hearing on whether the child should be transferred. A notice of the time and place of the transfer hearing shall be given to all parties to the case. Prior to the hearing, the court shall provide the defendant's counsel and the county

attorney with access to the report provided by the juvenile court officer and to all written material to be considered by the court.

3. After the hearing, the court may transfer jurisdiction to the juvenile court if the court determines that waiver to the criminal court would be inappropriate under the criteria set forth in section 232.45, subsection 6, paragraph "c", and section 232.45, subsection 7.

4. If after the hearing the court transfers jurisdiction over the defendant to the juvenile court for the alleged commission of the public offense, the

court shall forward the transfer order together with all papers, documents, and a transcript of all testimony filed or admitted into evidence in connection with the case to the clerk of the juvenile court in the same manner as provided in section 232.8, subsection 2.

5. A defendant transferred to the jurisdiction of the juvenile court shall be placed in detention under section 232.22.

95 Acts, ch 191, §54
NEW section

CHAPTER 805

CITATIONS IN LIEU OF ARREST

805.3 Procedure.

Before the cited person is released, the person shall sign the citation, either in a paper or electronic format, under penalty of providing false information under section 719.3, properly identifying the person cited. The person's signature shall also serve as a written promise to appear in court at the time and place specified. A copy of the citation shall be given to the person.

95 Acts, ch 81, §1; 95 Acts, ch 118, §34
See Code editor's note to §13B.8
Section amended

805.5 Failure to appear.

Any person who willfully fails to appear in court as specified by the citation shall be guilty of a simple misdemeanor. Where a defendant fails to make a required court appearance, the court shall issue an arrest warrant for the offense of failure to appear, and shall forward the warrant and the original or electronically produced citation to the clerk. The clerk shall enter a transfer to the issuing agency on the docket, and shall return the warrant with the original citation attached to the law enforcement agency which issued the original or electronically produced citation for enforcement of the warrant. Upon arrest of the defendant, the warrant and the original or electronically produced citation shall be returned to the court, and the offenses shall be heard and disposed of simultaneously.

95 Acts, ch 118, §35
Section amended

805.6 Uniform citation and complaint.

1. *a.* The commissioner of public safety, the director of transportation, and the director of natural resources, acting jointly, shall adopt a uniform, combined citation and complaint which shall be used for charging all traffic violations in Iowa under state law or local regulation or ordinance, and which shall be used for charging all other violations which are designated by section 805.8 to be scheduled violations. The filing fees and court costs in cases of parking

meter and overtime parking violations which are denied are as stated in section 602.8106, subsection 1. The court costs in scheduled violation cases where a court appearance is not required are as stated in section 602.8106, subsection 1. The court costs in scheduled violation cases where a court appearance is required are as stated in section 602.8106, subsection 1. This subsection does not prevent the charging of any of those violations by information, by private complaint filed under chapter 804, or by a simple notice of fine where permitted by section 321.236, subsection 1. Each uniform citation and complaint shall be serially numbered and shall be in quintuplicate, and the officer shall deliver the original and a copy to the court where the defendant is to appear, two copies to the defendant, and a copy to the law enforcement agency of the officer. The court shall forward an abstract of the uniform citation and complaint in accordance with section 321.491 when applicable.

The uniform citation and complaint shall contain spaces for the parties' names; the address of the alleged offender; the registration number of the offender's vehicle; the information required by section 805.2, a warning which states, "I hereby swear and affirm that the information provided by me on this citation is true under penalty of providing false information"; and a statement that providing false information is a violation of section 719.3; a list of the scheduled fines prescribed by section 805.8, either separately or by group, and a statement of the court costs payable in scheduled violation cases, whether or not a court appearance is required or is demanded; a brief explanation of sections 805.9 and 805.10; and a space where the defendant may sign an admission of the violation when permitted by section 805.9; and the uniform citation and complaint shall require that the defendant appear before a court at a specified time and place. The uniform citation and complaint also may contain a space for the imprint of a credit card, and may contain any other information which the commissioner of public safety and the director of natural resources may determine.

Notwithstanding other contrary requirements of this section, a uniform citation and complaint may be originated from a computerized device. The officer issuing the citation through a computerized device shall obtain electronically the signature of the person cited as provided in section 805.3 and shall give two copies of the citation to the person cited and shall provide a record of the citation to the court where the person cited is to appear and to the law enforcement agency of the officer by an electronic process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or copy of the citation.

b. The uniform citation and complaint shall contain the following:

(1) A promise to appear as provided in section 805.3.

(2) The following statement:

I hereby give my unsecured appearance bond in the amount of dollars and enter my written appearance. I agree that if I fail to appear in person or by counsel to defend against the offense charged in this citation the court is authorized to enter a conviction and render judgment against me for the amount of my appearance bond in satisfaction of the penalty plus court costs.

(3) A space immediately below the items in subparagraphs (1) and (2) for the signature of the person being charged which shall serve for each of the items in subparagraphs (1) and (2).

c. Unless the officer issuing the citation arrests the alleged offender, or permits admission or requires submission of bail as provided in section 805.9, subsection 3, the officer shall enter in the blank contained in the statement required by paragraph "b" one of the following amounts and shall require the person to sign the written appearance:

(1) If the offense is one to which a scheduled fine is applicable, an amount equal to one and one-half times the scheduled fine plus court costs.

(2) If the violation charged involved or resulted in an accident or injury to property and the total damages are less than five hundred dollars, the amount of fifty dollars plus court costs.

(3) If the violation is for any offense for which a court appearance is mandatory, the amount of one hundred dollars plus court costs.

d. The written appearance defined in paragraph "b" shall not be used for any offense other than a simple misdemeanor.

2. In addition to those violations which are required by subsection 1 to be charged upon a uniform citation and complaint, a violation of chapter 321 which is punishable as a simple, serious, or aggravated misdemeanor may be charged upon a uniform citation and complaint, whether or not the alleged offender is arrested by the officer making the charge.

3. Supplies of the uniform citation and complaint for municipal corporations and county agencies shall be paid for out of the budget of the municipal corpo-

ration or county receiving the fine resulting from use of the citation and complaint. Supplies of the uniform citation and complaint form used by other agencies shall be paid for out of the budget of the agency concerned and not out of the budget of the judicial department.

4. The uniform citation and complaint shall contain a place for the verification of the officer issuing the complaint. The complaint may be verified in accordance with section 622.1.

5. The commissioner of public safety and the director of the department of natural resources, acting jointly, shall design and publish a compendium of scheduled violations and scheduled fines, containing other information which they deem appropriate, and shall distribute copies to all courts and law enforcement officers and agencies of the state upon request. The cost of the publication shall be paid out of the budget of the department of public safety and out of the budget of the department of natural resources, each budget being liable for half of those costs. Copies shall be made available to individuals upon request, and a charge may be collected which does not exceed the cost of printing.

6. Supplies of uniform citation and complaint forms existing or on order on July 1, 1995, may be used until exhausted.

95 Acts, ch 81, §2-5; 95 Acts, ch 118, §36
Subsection 1, paragraph a, unnumbered paragraphs 2 and 3 amended
Subsection 1, paragraph b amended
Subsection 4 amended
NEW subsection 6

805.8 Scheduled violations.

1. *Application.* Except as otherwise indicated, violations of sections of the Code specified in this section are scheduled violations, and the scheduled fine for each of those violations is as provided in this section, whether the violation is of state law or of a county or city ordinance. The criminal penalty surcharge required by section 911.2 shall be added to the scheduled fine.

2. *Traffic violations.*

a. For parking violations under sections 321.236, 321.239, 321.358, 321.360, and 321.361, the scheduled fine is five dollars. The scheduled fine for a parking violation of section 321.236 increases in an amount up to ten dollars, as authorized by ordinance pursuant to section 321.236, subsection 1, paragraph "a", if the parking violation is not paid within thirty days of the date upon which the violation occurred. For purposes of calculating the unsecured appearance bond required under section 805.6, the scheduled fine shall be five dollars. However, violations charged by a city or county upon simple notice of a fine instead of a uniform citation and complaint as permitted by section 321.236, subsection 1, paragraph "a", are not scheduled violations, and this section shall not apply to any offense charged in that manner. For a parking violation under section 321.362 or 461A.38 the scheduled fine is ten dollars. For a parking violation under section 321L.4, subsection 2, the scheduled fine is fifty dollars.

b. For registration violations under sections 321.32, 321.34, 321.37, 321.38, and 321.41 the scheduled fine is five dollars.

c. For improperly used or nonused, or defective or improper equipment, other than brakes, driving lights and brakelights, under sections 321.317, 321.387, 321.388, 321.389, 321.390, 321.391, 321.392, 321.393, 321.422, 321.432, 321.436, 321.437, 321.438, subsection 1 or 3, 321.439, 321.440, 321.441, 321.442, 321.444, and 321.445, the scheduled fine is ten dollars.

d. For improper equipment under section 321.438, subsection 2, the scheduled fine is fifteen dollars.

e. For improperly used or nonused or defective or improper equipment under sections 321.383, 321.384, 321.385, 321.386, 321.398, 321.402, 321.403, 321.404, 321.409, 321.419, 321.420, 321.423, 321.430, and 321.433, the scheduled fine is twenty dollars.

f. For violations of the conditions or restrictions of a motor vehicle license under section 321.180, 321.193 and 321.194, the scheduled fine is twenty dollars.

g. (1) For excessive speed violations when not more than five miles per hour in excess of the limit under sections 321.236, subsections 5 and 11, 321.285, and 461A.36, the scheduled fine is ten dollars.

(2) Excessive speed in conjunction with a violation of section 321.278 is not a scheduled violation, whatever the amount of excess speed.

(3) For excessive speed violations when in excess of the limit under sections 321.236, subsections 5 and 11, 321.285, and 461A.36 by more than five and not more than ten miles per hour the fine is twenty dollars, by more than ten and not more than fifteen miles per hour the fine is thirty dollars, by more than fifteen and not more than twenty miles per hour the fine is forty dollars, and by more than twenty miles per hour the fine is forty dollars plus two dollars for each mile per hour of excessive speed over twenty miles per hour over the limit.

(4) Notwithstanding subparagraphs (1) and (3), for excessive speed violations in speed zones greater than fifty-five miles per hour when in excess of the limit by five miles per hour or less the fine is ten dollars, by more than five and not more than ten miles per hour the fine is twenty dollars, by more than ten and not more than fifteen miles per hour the fine is forty dollars, by more than fifteen and not more than twenty miles per hour the fine is sixty dollars, and by more than twenty miles per hour the fine is sixty dollars plus two dollars for each mile per hour of excessive speed over twenty miles per hour over the limit.

(5) Excessive speed in whatever amount by a school bus is not a scheduled violation under any section listed in a subparagraph of this paragraph "g".

h. For operating, passing, turning and standing violations under sections 321.236, subsections 3, 4, 9 and 12, 321.275, subsections 1 through 8, 321.295, 321.297, 321.299, 321.303, 321.304, subsections 1 and 2, 321.305, 321.306, 321.311, 321.312, 321.314, 321.315, 321.316, 321.318, 321.323, 321.340, 321.344, 321.353, 321.354, 321.363, 321.365, 321.366, 321.368, 321.382 and 321.395, the scheduled fine is fifteen dollars.

i. For violations involving failures to yield or to observe pedestrians and other vehicles under sections 321.257, subsection 2, 321.288, 321.298, 321.307, 321.308, 321.313, 321.319, 321.320, 321.321, 321.329, 321.333, and 321.367, the scheduled fine is twenty dollars.

j. For violations by pedestrians and bicyclists under sections 321.234, subsections 3 and 4, 321.236, subsection 10, 321.257, subsection 2, 321.325, 321.326, 321.328, 321.331, 321.332, 321.397 and 321.434, the scheduled fine is ten dollars.

k. For violations by operators of school buses and emergency vehicles, and for violations by other motor vehicle operators when in vicinity, under sections 321.231, 321.324, and 321.372, the scheduled fine is twenty-five dollars.

For violations by operators of school buses under section 321.285, the scheduled fine is twenty-five dollars. However, excessive speed by a school bus in excess of ten miles over the limit is not a scheduled violation.

l. For violations of traffic signs and signals, and for failure to obey an officer under sections 321.229, 321.236, subsections 2 and 6, 321.256, 321.257, subsection 2, 321.294, 321.304, subsection 3, 321.322, 321.341, 321.342, 321.343 and 321.415, the scheduled fine is twenty dollars.

m. For height, weight, length, width and load violations and towed vehicle violations under sections 321.309, 321.310, 321.381, 321.394, 321.437, 321.454, 321.455, 321.456, 321.457, 321.458, 321.461, and 321.462, the scheduled fine is twenty-five dollars. For weight violations under sections 321.459 and 321.466, the scheduled fine is twenty dollars for each two thousand pounds or fraction thereof of overweight.

n. For violation of display of identification required by section 326.22 and violation of trip permits as prescribed by section 326.23, the scheduled fine is twenty dollars.

o. For violation of registration provisions under section 321.17; violation of intrastate hauling on foreign registration under section 321.54; improper operation or failure to register under section 321.55; and violation of requirement for display of registration or plates under section 321.98, the scheduled fine is twenty dollars.

p. For failure to comply with administrative rules adopted under section 325.3, 327.3 or 327A.17 which require that evidence of intrastate authority be carried and displayed upon request, that a valid lease be carried and displayed upon request, or that a valid fee receipt be carried and displayed upon request, the scheduled fine is twenty-five dollars.

q. For failure to have proper carrier identification markings under section 325.31, 327.19, 327A.8 or 327B.1, the scheduled fine is fifteen dollars.

r. For failure to have proper evidence of interstate authority carried or displayed under section 327B.1 and for failure to register, carry, or display evidence that interstate authority is not required under section 327B.1, the scheduled fine is one hundred dollars.

s. For violations of rules adopted by the department under section 321.449, the scheduled fine is twenty-five dollars.

t. For violation of section 321.364 or rules adopted under section 321.450, the scheduled fine is fifty dollars.

u. For obtaining, possessing, or having in one's control or one's premises a motor vehicle license, a nonoperator's identification card, or a blank motor vehicle license form in violation of section 321.216, subsection 7 or 8, the scheduled fine is fifty dollars.

v. Violations of the schedule of axle and tandem axle and gross or group of axle weight violations in section 321.463 shall be scheduled violations subject to the provisions, procedures and exceptions contained in sections 805.6 to 805.11, irrespective of the amount of the fine under that schedule. Violations of the schedule of weight violations shall be chargeable, where the fine charged does not exceed one hundred dollars, only by uniform citation and complaint. Violations of the schedule of weight violations, where the fine charged exceeds one hundred dollars:

(1) Shall, when the violation is admitted and section 805.9 applies, be chargeable upon uniform citation and complaint, indictment, or county attorney's information,

(2) but otherwise, shall be chargeable only upon indictment or county attorney's information. In all cases of charges under the schedule of weight violations, the charge shall specify the amount of fine charged under the schedule. Where a defendant is convicted and the fine under the foregoing schedule of weight violations exceeds one hundred dollars, the conviction shall be of an indictable offense although section 805.9 is employed and whether the violation is charged upon uniform citation and complaint, indictment, or county attorney's information.

w. For failure to have a valid license or permit for operating a motor vehicle on the highways of this state, the scheduled fine is twenty dollars.

x. For failing to secure a child with a child restraint system, safety belt, or harness in violation of section 321.446, the scheduled fine is ten dollars.

y. For failure of having a bicycle safety flag on a motorized bicycle in violation of section 321.275, subsection 9, the scheduled fine is five dollars.

2A. *Moving traffic violations — construction zones.* The scheduled fine for any moving traffic violations under chapter 321 as provided in this section shall be doubled or shall be set at one hundred dollars, whichever is less, if the violation occurs within any road construction zone, as defined in section 321.1.

3. *Violations of navigation laws.*

a. For violations of registration, inspections, identification, and record provisions under sections 462A.5, 462A.35, 462A.37, and for unused or improper or defective lights and warning devices under section 462A.9, subsections 3, 4, 5, 9, and 10, the scheduled fine is ten dollars.

b. For violations of registration, identification, and record provisions under sections 462A.4 and 462A.10

and for unused or improper or defective equipment under section 462A.9, subsections 2, 6, 7, 8, and 13, and section 462A.11 and for operation violations under sections 462A.26, 462A.31 and 462A.33, the scheduled fine is twenty dollars.

c. For operating violations under sections 462A.12, 462A.15, subsection 1, 462A.24, and 462A.34, the scheduled fine is twenty-five dollars. However, a violation of section 462A.12, subsection 2, is not a scheduled violation.

d. For violations of use, location and storage of vessels, devices and structures under sections 462A.27, 462A.28 and 462A.32, the scheduled fine is fifteen dollars.

e. For violations of all subdivision ordinances under section 462A.17, subsection 2, except those relating to matters subject to regulation by authority of subsection 5 of section 462A.31, the scheduled fine is the same as prescribed for similar violations of state law. For violations of subdivision ordinances for which there is no comparable state law the scheduled fine is ten dollars.

4. *Snowmobile and all-terrain vehicle violations.*

a. For registration violations under section 321G.3, the scheduled fine is twenty dollars. When the scheduled fine is paid, the violator shall submit sufficient proof that a valid registration has been obtained.

b. For operating violations under sections 321G.9, subsections 1, 2, 3, 4, 5 and 7, 321G.11, and 321G.13, subsections 4 and 9, the scheduled fine is twenty dollars.

c. For improper or defective equipment under section 321G.12, the scheduled fine is ten dollars.

d. For violations of section 321G.19, the scheduled fine is fifteen dollars.

e. For identification violations under section 321G.5, the scheduled fine is ten dollars.

5. *Fish and game law violations.*

a. For violations of section 484A.2, the scheduled fine is ten dollars.

b. For violations of sections 481A.54, 481A.69, 481A.71, 481A.72, 482.6, 483A.3, 483A.6, 483A.19, and 483A.27, the scheduled fine is twenty dollars.

c. For violations of sections 481A.6, 481A.21, 481A.22, 481A.26, 481A.50, 481A.56, 481A.60 through 481A.62, 481A.82, 481A.83, 481A.84, 481A.92, 481A.123, 482.7, 483A.7, 483A.8, 483A.23, and 483A.24, the scheduled fine is twenty-five dollars.

d. For violations of sections 481A.7, 481A.24, 481A.47, 481A.52, 481A.53, 481A.55, 481A.58, 481A.63, 481A.76, 481A.81, 481A.90, 481A.91, 481A.97, 481A.122, 481A.126, 481A.142, 482.8, and 483A.37, the scheduled fine is fifty dollars.

e. For violations of sections 481A.85, 481A.93, 481A.95, 481A.120, 481A.137, 481B.5, 482.3, and 482.9, the scheduled fine is one hundred dollars.

f. For violations of section 481A.38 relating to the taking, pursuing, killing, trapping or ensnaring, buying, selling, possessing, or transporting any game, protected nongame animals, furbearing animals, or fur or skin of the animals, mussels, frogs, or fish or part of them, the scheduled fines are as follows:

(1) For deer or turkey, the scheduled fine is one hundred dollars.

(2) For protected nongame, the scheduled fine is one hundred dollars.

(3) For mussels, frogs, spawn, or fish, the scheduled fine is twenty-five dollars.

(4) Other game, the scheduled fine is fifty dollars.

(5) For furbearing animals, the scheduled fine is seventy-five dollars.

g. For violations of section 481A.38 relating to an attempt to take, pursue, kill, trap, buy, sell, possess, or transport any game, protected nongame animals, furbearing animals, or fur or skin of the animals, mussels, frogs, or fish or part of them, the scheduled fines are as follows:

(1) For game or furbearing animals, the scheduled fine is fifty dollars.

(2) For protected nongame, the scheduled fine is fifty dollars.

(3) For mussels, frogs, spawn, or fish, the scheduled fine is ten dollars.

h. For violations of section 481A.48 relating to restrictions on game birds and animals, the scheduled fines are as follows:

(1) Out-of-season, the scheduled fine is one hundred dollars.

(2) Over limit, the scheduled fine is one hundred dollars.

(3) Attempt to take, the scheduled fine is fifty dollars.

(4) General waterfowl restrictions, the scheduled fine is fifty dollars.

(a) No federal stamp, the scheduled fine is fifty dollars.

(b) Unplugged shotgun, the scheduled fine is ten dollars.

(c) Possession of other than steel shot, the scheduled fine is twenty-five dollars.

(d) Early or late shooting, the scheduled fine is twenty-five dollars.

i. For violations of section 481A.67 relating to general violations of fishing laws, the scheduled fine is twenty-five dollars.

(1) For over limit catch, the scheduled fine is thirty dollars.

(2) For under minimum length or weight, the scheduled fine is twenty dollars.

(3) For out-of-season fishing, the scheduled fine is fifty dollars.

j. For violations of section 481A.73 relating to trotlines and throwlines:

(1) For trotline or throwline violations in legal waters, the scheduled fine is twenty-five dollars.

(2) For trotline or throwline violations in illegal waters, the scheduled fine is fifty dollars.

k. For violations of section 481A.80 relating to minnows:

(1) For general minnow violations, the scheduled fine is twenty-five dollars.

(2) For commercial purposes, the scheduled fine is fifty dollars.

l. For violations of section 481A.87 relating to the

taking or possessing of furbearing animals out of season:

(1) For red fox, gray fox, or mink, the scheduled fine is one hundred dollars.

(2) For all other furbearers, the scheduled fine is fifty dollars.

m. For violations of section 482.4 relating to gear tags:

(1) For commercial license violations, the scheduled fine is one hundred dollars.

(2) For no gear tags, the scheduled fine is twenty-five dollars.

n. For violations of section 482.11 relating to turtles:

(1) For commercial turtle violations, the scheduled fine is one hundred dollars.

(2) For sport turtle violations, the scheduled fine is fifty dollars.

o. For violations of section 482.12 relating to mussels:

(1) For commercial mussel violations, the scheduled fine is one hundred dollars.

(2) For sport mussel violations, the scheduled fine is fifty dollars.

p. For violations of section 483A.1 relating to licenses and permits, the scheduled fines are as follows:

(1) For a license or permit costing ten dollars or less, the scheduled fine is twenty dollars.

(2) For a license or permit costing more than ten dollars but not more than twenty dollars, the scheduled fine is thirty dollars.

(3) For a license or permit costing more than twenty dollars but not more than forty dollars, the scheduled fine is fifty dollars.

(4) For a license or permit costing more than forty dollars but not more than fifty dollars, the scheduled fine is seventy dollars.

(5) For a license or permit costing more than fifty dollars, the scheduled fine is one hundred dollars.

q. For violations of section 483A.26 relating to false claims for licenses:

(1) For making a false claim for a license by a resident, the scheduled fine is fifty dollars.

(2) For making a false claim for a license by a nonresident, the scheduled fine is one hundred dollars.

r. For violations of section 483A.36 relating to the conveyance of guns:

(1) For conveying an assembled, unloaded gun, the scheduled fine is twenty-five dollars.

(2) For conveying a loaded gun, the scheduled fine is fifty dollars.

5A. Ginseng violations. For a violation of section 456A.24, subsection 11, the scheduled fine is one hundred dollars.

6. Violations relating to the use and misuse of parks and preserves.

a. For violations under sections 461A.39, 461A.45 and 461A.50, the scheduled fine is ten dollars.

b. For violations under sections 461A.40, 461A.43, 461A.46 and 461A.49, the scheduled fine is fifteen dollars.

c. For violations of section 461A.44, the scheduled fine is fifty dollars.

d. For violations of section 461A.48, the scheduled fine is twenty-five dollars.

7. *Description of violations.* The descriptions of offenses used in this section are for convenience only and shall not be construed to define any offense or to include or exclude any offense other than those specifically included or excluded by reference to the Code. A reference to a section or subsection of the Code without further limitation includes every offense defined by that section or subsection.

8. *Energy emergency violations.* For violations of an executive order issued by the governor under the provisions of section 473.8, the scheduled fine is fifty dollars.

9. *Radar jamming devices.* For violation of section 321.232, the scheduled fine is ten dollars.

10. *Alcoholic beverage violations.*

a. For violations of section 123.47A, which constitute first offenses as provided in that section, the scheduled fine is fifteen dollars.

b. For violations of section 123.49, subsection 2,

paragraph "h", the scheduled fine is one hundred dollars.

c. For violations of section 321.284, the scheduled fine is fifty dollars.

11. *Smoking violations.* For violations of section 142B.6 or 453A.2, subsection 2, the scheduled fine is twenty-five dollars, and is a civil penalty, and the criminal penalty surcharge under section 911.2 shall not be added to the penalty, and the court costs pursuant to section 805.9, subsection 6, shall not be imposed. If the civil penalty assessed for a violation of section 142B.6 is not paid in a timely manner, a citation shall be issued for the violation in the manner provided in section 804.1. However, a person under age eighteen shall not be detained in a secure facility for failure to pay the civil penalty. The complainant shall not be charged a filing fee.

For failing to pay the civil penalty under section 453A.2, the scheduled fine is twenty-five dollars. Failure to pay the scheduled fine shall not result in the person being detained in a secure facility. The complainant shall not be charged a filing fee.

95 Acts, ch 48, §22
Subsection 10, NEW paragraph c

CHAPTER 808A

STUDENT SEARCHES

808A.1 Definitions.

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

1. "*Protected student area*" includes, but is not limited to:

a. A student's body.

b. Clothing worn or carried by a student.

c. A student's pocketbook, briefcase, duffel bag, bookbag, backpack, knapsack, or any other container used by a student for holding or carrying personal belongings of any kind and in the possession or immediate proximity of the student.

d. A school locker, desk, or other facility or space issued or assigned to, or chosen by, the student for the storage of personal belongings of any kind, which the student locks or is permitted to lock.

2. "*School*" means a public or nonpublic educational institution offering any of grades kindergarten through twelve.

3. "*School official*" means a licensed school employee, and includes unlicensed school employees employed for security or supervision purposes.

4. "*Student*" means a person enrolled in a school for any of grades kindergarten through twelve.

5. "*Student search rule*" means a rule established by the school board of a public school, pursuant to section 279.8 or 279.9, or the authorities in charge of a nonpublic school controlling the manner of the searching of students or protected student areas. A student search rule, to be valid for purposes of this chapter, must be reasonable and shall be based upon

relevant factors which include, but are not limited to, the following:

a. The seriousness of the violation for which a search may be instituted.

b. The age or ages of the students which may be searched pursuant to the rule.

c. The information or suspicion which must exist to warrant the institution of a search.

95 Acts, ch 191, §55
Subsection 1, paragraph d amended

808A.2 Search of student or protected student area by school official.

1. A school official may conduct a search of a student or a protected student area only if all of the following apply:

a. The school official has a reasonable and articulable suspicion that a criminal offense or a school rule or regulation bearing on school order has been violated.

b. The school official has a reasonable and articulable belief that the search will produce evidence of such violation.

c. If the search is of an individual student, the suspicion and belief required by paragraphs "a" and "b" is particular to the student to be searched.

d. If the search is of more than one student or of a protected student area, the search must be based upon and pursuant to a valid and reasonable student search rule.

2. Notwithstanding subsection 1, paragraphs "a" through "c", as they apply to searches of protected

student areas, school officials may conduct periodic inspections of all, or a randomly selected number of, school lockers. However, the school district shall provide written notice to each student, and the adult who enrolls the student at the school, that school officials may conduct periodic inspections of all school lockers without prior notice. An inspection under this subsection shall only occur in the presence of the students whose lockers are being inspected.

3. Under no circumstances may a search be made which is unreasonable in light of the following:

- a. The age of the student.
 - b. The nonseriousness of the violation.
 - c. The sex of the student.
 - d. The nature of the suspected violation.
4. A school official shall not conduct a search which involves:

- a. A strip search.
- b. A body cavity search.
- c. The use of a drug sniffing animal to search a student's body.
- d. The search of a student by a school official not of the same sex as the student.
5. If a search pursuant to subsection 1 of a school locker, desk, or other facility or space issued or assigned to, or chosen by a student, reveals a violation of the law or the rules of the school regarding a dangerous weapon or controlled substance, the violation shall constitute reasonable grounds for future searches without advance notice to the student of the student's school locker, desk, or other facility or space issued or assigned to, or chosen by the student.

95 Acts, ch 191, §56

NEW subsection 2 and former subsections 2-4 renumbered as 3-5

CHAPTER 809

DISPOSITION OF SEIZABLE AND FORFEITABLE PROPERTY

809.1 Definitions.

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

1. "*Seizable property*" means any of the following:
 - a. Property which is relevant in a criminal prosecution or investigation.
 - b. Property defined by law to be forfeitable property.
 - c. Property which if not seized by the state poses an imminent danger to a person's health, safety, or welfare.
2. "*Forfeitable property*" means any of the following:
 - a. Property which is illegally possessed.
 - b. Property which has been used or is intended to be used to facilitate the commission of a criminal offense or to avoid detection or apprehension of a person committing a criminal offense.
 - c. Property which is acquired as or from the proceeds of a criminal offense.

d. Property offered or given to another as an inducement for the commission of a criminal offense.

3. "*Seized property*" means property taken or held by any law enforcement agency without the consent of the person, if any, who had possession or a right to possession of the property at the time it was taken into custody. Seized property does not include property taken into custody solely for safekeeping purposes or property taken into custody with the consent of the owner or the person who had possession at the time of the taking. If consent to the taking of property was given by the person in possession of the property and later withdrawn or found to be insufficient, the property shall then be returned or the property shall be deemed seized as of the time of the demand and refusal.

4. The definitions contained in subsections 1 through 3 shall not apply to violations of chapter 321.

95 Acts, ch 48, §23

Subsection 4 amended

CHAPTER 811

PRETRIAL RELEASE — BAIL

811.1 Bail and bail restrictions.

All defendants are bailable both before and after conviction, by sufficient surety, or subject to release upon condition or on their own recognizance, except that the following defendants shall not be admitted to bail:

1. A defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of a class "A" felony, murder, felonious assault,

felonious child endangerment, sexual abuse in the second degree, sexual abuse in the third degree, kidnapping, robbery in the first degree, arson in the first degree, or burglary in the first degree, or any felony included in section 124.401, subsection 1, paragraph "a".

2. A defendant appealing a conviction of a class "A" felony, murder, felonious assault, felonious child endangerment, sexual abuse in the second degree,

sexual abuse in the third degree, kidnapping, robbery in the first degree, arson in the first degree, or burglary in the first degree, or any felony included in section 124.401, subsection 1, paragraph "a".

3. Notwithstanding subsections 1 and 2, a defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of, or appealing a conviction of, a felony offense under

chapter 124 not provided for in subsection 1 or 2 is presumed to be ineligible to be admitted to bail unless the court determines that such release reasonably will not result in the person failing to appear as required and will not jeopardize the personal safety of another person or persons.

95 Acts, ch 87, §1
Subsections 1 and 2 amended

CHAPTER 815

COSTS — COMPENSATION AND FEES — INDIGENT DEFENSE

815.10 Appointment of counsel by court.

1. The court, for cause and upon its own motion or upon application by an indigent person or a public defender, may appoint a public defender or any attorney who is admitted to the practice of law in this state to represent an indigent person at any state of the proceedings or on appeal of any action in which the indigent person is entitled to legal assistance at public expense. An appointment shall not be made unless the person is determined to be indigent under section 815.9.

2. If a court finds that a person desires legal assistance and is not indigent, but refuses to employ an attorney, the court shall appoint a public defender or another attorney to represent the person at public

expense. If an attorney other than a public defender is appointed, the fee paid to the attorney shall be taxed as a court cost against the person.

3. An attorney other than a public defender who is appointed by the court under subsection 1 or 2 shall apply to the district court for compensation and for reimbursement of costs incurred. The amount of compensation due shall be determined in accordance with section 815.7.

91 Acts, ch 268, §439
1991 amendment repealed effective July 1, 1995; language of 1991 Code restored per instructions to Code editor; 91 Acts, ch 268, §439
See 94 Acts, ch 1187, §24, for amendments to section as amended by 91 Acts, ch 268, §436, which are stricken in accordance with instructions to Code editor; 91 Acts, ch 268, §439
Section amended

CHAPTER 819A

UNIFORM ACT FOR RENDITION OF PRISONERS AS WITNESSES IN CRIMINAL PROCEEDINGS

819A.1 Definitions.

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

1. "*Criminal proceeding*" means a criminal action which is pending or is before a court in a state. For purposes of this subsection, a criminal action includes, but is not limited to, a prosecution of a complaint, indictment, or information, and an investigation by a grand jury.

2. "*Penal institution*" means a jail, prison, penitentiary, house of correction, or other place of penal detention which is located in a state and includes, but is not limited to, a city or county jail or detention facility, an institution or facility under the control of the department of corrections, the state training school or other facility under the control of the director of the department of human services, and a facility or electronic monitoring program under the control of a judicial district department of correctional services in this state.

3. "*State*" means any state of the United States,

the District of Columbia, the Commonwealth of Puerto Rico, or any territory of the United States.

4. "*Witness*" means a person, who is confined in a penal institution in a state, whose testimony is requested in another state in a criminal proceeding.

95 Acts, ch 88, §1
NEW section

819A.2 Testimony of in-state witness in out-of-state proceeding.

1. A judge of a court of record in another state, which has enacted a law that requires persons confined in penal institutions within that state to appear and testify in this state, may certify to the district court in the county in this state in which the witness is confined, as follows:

a. That a criminal proceeding is pending or before a court in the other state.

b. That a person who is confined in a penal institution in this state may be a material witness in the criminal proceeding.

c. That the person's appearance and testimony will be required at a specified time or during a specified time period.

2. Upon the filing of the certification, the district court shall set the matter for hearing and shall direct the person having custody of the witness to produce the witness at the hearing. The clerk of the district court shall send copies of the order for hearing, together with a copy of the certification, to the attorney general, the person having custody of the witness, and the witness.

95 Acts, ch 88, §2
NEW section

819A.3 Order for transfer.

1. At the hearing on the certification, the district court shall determine all of the following issues:

a. That the testimony of the witness may be material and necessary to the criminal proceeding in the other state.

b. That the appearance of and testimony by the witness are not adverse to the interests of this state or the health or legal rights of the witness.

c. That the laws of the other state in which the witness is requested to testify will protect the witness from arrest and the service of civil and criminal process based on any act committed prior to the witness's arrival in the other state under a transfer order.

d. That the possibility that the witness may be subject to arrest or to service of civil or criminal process in any other state through which the witness will be required to pass is remote.

2. If the district court makes affirmative findings on all of the issues, the district court shall issue an order for transfer, with a copy of the certificate attached, that provides for all of the following orders:

a. An order directing the witness to attend and testify.

b. An order directing the person having custody of the witness to produce the witness in the court in which the criminal proceeding is taking place.

c. An order prescribing such other terms and conditions as the district court may require, including, but not limited to, the terms and conditions provided in section 819A.4.

95 Acts, ch 88, §3
NEW section

819A.4 Terms and conditions.

1. The order directing the witness to attend and testify and the order directing the person having custody of the witness to produce the witness shall provide for either of the following:

a. The return of the witness at the conclusion of the witness's testimony, proper safeguards on the witness's custody, and that the requesting jurisdiction provide proper financial reimbursement or prepayment of all expenses incurred in the production of the witness.

b. That the person having custody of the witness transfer custody of the witness to an officer of the

requesting jurisdiction who comes to the penal institution in which the witness is confined to accept custody of the witness.

2. If the requesting jurisdiction sends an officer from the requesting jurisdiction to accept custody of the witness, the district court shall require that the requesting jurisdiction provide proper safeguards for the witness's custody while in transfer, and pay and be liable for all expenses incurred in producing and returning the witness.

3. The order shall not be effective until an order is entered by the court of the other state that submitted the request for transfer that directs compliance with the terms and conditions required by the district court in this state.

95 Acts, ch 88, §4
NEW section

819A.5 Exceptions.

This chapter shall not apply to persons confined in a penal institution because of insanity or other mental disorder which prevents the person from appreciating the charge, understanding the proceedings, or assisting effectively in the person's defense.

95 Acts, ch 88, §5
NEW section

819A.6 Testimony of out-of-state witness in in-state proceeding.

1. If a person confined in a penal institution in any other state may be a material witness in a criminal proceeding in a court of this state, a judicial officer of the district court in this state may certify to a court of record in another state having jurisdiction over the witness as follows:

a. That a criminal proceeding is pending and before a court in this state.

b. That a person who is confined in a penal institution in the other state may be a material witness in the criminal proceeding.

c. That the person's appearance and testimony will be required at a specified time or during a specified time period.

2. The certification shall be filed with the court of record in the other state and notice of the certification shall be given to the attorney general in that state.

95 Acts, ch 88, §6
NEW section

819A.7 Compliance.

A judicial officer of the district court in this state may enter an order directing compliance with any terms and conditions prescribed by a judicial officer of the other state in which the witness is confined.

95 Acts, ch 88, §7
NEW section

819A.8 Exemption from arrest and service of process.

If a witness from another state comes into or passes through this state under an order directing the witness to attend and testify in this or another state, the

witness shall not be subject to arrest or the service of civil or criminal process during the time that the witness is in this state, if the service of process is based on any act committed prior to the witness's arrival in this state pursuant to a transfer order.

95 Acts, ch 88, §8
NEW section

819A.9 Uniformity of interpretation.

This chapter shall be construed to effectuate the purpose of making uniform the law of those states

which enact a uniform rendition of prisoners as witnesses in criminal proceedings Act.

95 Acts, ch 88, §9
NEW section

819A.10 Short title.

This chapter may be cited as the "*Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act*".

95 Acts, ch 88, §10
NEW section

CHAPTER 901

JUDGMENT AND SENTENCING PROCEDURES

Task force to develop plan for use of intermediate criminal sanctions as sentencing options; 93 Acts, ch 171, §6, 11;
94 Acts, ch 1196, §23; 95 Acts, ch 207, §28, 30

CHAPTER 902

FELONIES

902.2 Commutation procedure for class "A" felons.

A person who has been sentenced to life imprisonment under section 902.1 may, no more frequently than once every ten years, make an application to the governor requesting that the person's sentence be commuted to a term of years. The director of the Iowa department of corrections may make a request to the governor that a person's sentence be commuted to a term of years at any time. Upon receipt of a request for commutation, the governor shall send a copy of the request to the Iowa board of parole for investigation and recommendations as to whether the person should be considered for commutation. The board shall conduct an interview of the class "A" felon and shall make a report of its findings and recommendations to the governor.

95 Acts, ch 128, §1
Section stricken and rewritten

902.7 Minimum sentence — use of a dangerous weapon.

At the trial of a person charged with participating in a forcible felony, if the trier of fact finds beyond a reasonable doubt that the person is guilty of a forcible felony and that the person represented that the person was in the immediate possession and control of a dangerous weapon, displayed a dangerous weapon in a threatening manner, or was armed with a dangerous weapon while participating in the forcible felony the convicted person shall serve a minimum of five years of the sentence imposed by law. A person sentenced pursuant to this section shall not be eligible for parole until the person has served the minimum sentence of confinement imposed by this section.

95 Acts, ch 126, §1
Section amended

CHAPTER 903A

REDUCTION OF SENTENCES

903A.3 Loss or forfeiture of good conduct time.

1. Upon finding that an inmate has violated an institutional rule, or has had an action or appeal dismissed under section 610A.2, the independent administrative law judge may order forfeiture of any or all good conduct time earned and not forfeited up

to the date of the violation by the inmate and may order forfeiture of any or all good conduct time earned and not forfeited up to the date the action or appeal is dismissed, unless the court entered such an order under section 610A.3. The independent administrative law judge has discretion within the guidelines established pursuant to section 903A.4, to determine

the amount of time that should be forfeited based upon the severity of the violation. Prior violations by the inmate may be considered by the administrative law judge in the decision.

2. The orders of the administrative law judge are subject to appeal to the superintendent or warden of the institution, or the superintendent's or warden's designee, who may either affirm, modify, remand for correction of procedural errors, or reverse an order. However, sanctions shall not be increased on appeal. A decision of the superintendent, warden, or designee is subject to review by the director of the Iowa department of corrections who may either affirm, modify, remand for correction of procedural errors, or reverse the decision. However, sanctions shall not be increased on review.

3. The director of the Iowa department of corrections or the director's designee, may restore all or any portion of previously forfeited good conduct time for acts of heroism or for meritorious actions. The director shall establish by rule the requirements as to which activities may warrant the restoration of good conduct time and the amount of good conduct time to be restored.

4. The inmate disciplinary procedure, including but not limited to the method of awarding or forfeiting time pursuant to this chapter, is not a contested case subject to chapter 17A.

95 Acts, ch 167, §5
Subsection 1 amended

903A.5 Time to be served — credit.

An inmate shall not be discharged from the custody of the director of the Iowa department of corrections

until the inmate has served the full term for which the inmate was sentenced, less good conduct time earned and not forfeited, unless the inmate is pardoned or otherwise legally released. Good conduct time earned and not forfeited shall apply to reduce a mandatory minimum sentence being served pursuant to section 124.406, 124.413, 902.7, 902.8, or 902.11. An inmate shall be deemed to be serving the sentence from the day on which the inmate is received into the institution. However, if an inmate was confined to a county jail or other correctional or mental facility at any time prior to sentencing, or after sentencing but prior to the case having been decided on appeal, because of failure to furnish bail or because of being charged with a nonbailable offense, the inmate shall be given credit for the days already served upon the term of the sentence. The sheriff of the county in which the inmate was confined shall certify to the clerk of the district court from which the inmate was sentenced the number of days so served. The clerk of the district court shall forward a copy of the certification of the days served to the warden.

An inmate shall not receive credit upon the inmate's sentence for time spent in custody in another state resisting return to Iowa following an escape, or for time served in an institution or jail of another jurisdiction during any period of time the person is receiving credit upon a sentence of that other jurisdiction.

95 Acts, ch 91, §8
Unnumbered paragraph 1 amended

CHAPTER 904

DEPARTMENT OF CORRECTIONS

904.302 Farm operations administrator.

The director may appoint a farm operations administrator for institutions under the control of the departments of corrections and human services. If appointed, the farm operations administrator, subject to the direction of the director shall do all of the following:

1. Manage and supervise all farming and nursery operations at institutions, farms and gardens of the departments of corrections and human services.

2. Determine priorities on the use of agricultural resources and labor for farming and nursery operations, and cooperate with Iowa state university of science and technology in all approved uses connected with the institution.

3. Develop an annual operations plan for crop and livestock production and utilization that will provide work experience and contribute to developing vocational skills of the institutions' inmates and residents. The department of human services must approve the parts of the plan that affect farm opera-

tions on property of institutions having programs of the department of human services.

4. Coordinate farm lease arrangements, farm input purchases, farm product distribution, machinery maintenance and replacement, and renovation of farm buildings, fences and livestock facilities.

5. Develop and maintain accounting records, budgeting and cash flow systems, and inventory records.

6. Advise and instruct institution staff and inmates in application of agricultural technology.

7. Implement actions to restore and maintain productivity of soil resources at the institutions through crop rotation, minimum tillage, contouring, terracing, waterways, pasture renovation, windbreaks, buffer zones, and wildlife habitat in accordance with United States department of agriculture natural resources conservation service plans and recommendations.

8. Administer the revolving farm fund created in section 904.706.

9. Do any other farm management duties assigned by the director.

95 Acts, ch 216, §25
Subsection 7, reference to federal agency updated

904.311A Prison recycling fund.

The Iowa prison recycling fund is created and established as a separate and distinct fund in the state treasury. All moneys remitted to the department for recycling operations in each fiscal year commencing with the fiscal year beginning July 1, 1994, shall be deposited in the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund. Notwithstanding section 8.33, moneys in the fund shall not revert to the general fund of the state at the close of a fiscal year but shall remain in the fund and be used as directed in this section in the succeeding fiscal year. The treasurer of state shall act as custodian of the fund and disburse moneys from the fund as directed by the department for the purpose of payment of operating expenses for recycling.

95 Acts, ch 207, §26
Section applies retroactively to July 1, 1994; 95 Acts, ch 207, §30
NEW section

904.508A Inmate telephone rebate fund.

The department is authorized to establish and maintain an inmate telephone rebate fund in each institution for the deposit of moneys received for inmate telephone rebates. All funds deposited in this fund shall be used for the benefit of inmates. The director shall adopt rules providing for the disbursement of moneys from the fund.

95 Acts, ch 207, §27
NEW section

904.516 Academic achievement of inmates — literacy and high school equivalency programs.

1. Effective July 1, 1997, a person who is committed to the custody of the director of the department of corrections may be evaluated for purposes of determining the level of achievement in the basic skills of arithmetic, the communicative arts of reading, writing, grammar, and spelling, social studies, and the sciences.

2. Persons who demonstrate functional literacy competence below the sixth grade level may be required to participate in literacy programs established by the department. Participation shall be voluntary, but shall be reflected as part of the person's record at the institution. Persons who are required to participate in literacy programs and who refuse to participate shall be subject to the following penalties:

- a. Eligibility only for a minimum allowance.
- b. Placement on idle status.
- c. Ineligibility for work bonuses.
- d. Ineligibility for minimum out or minimum live out status.
- e. Ineligibility for other privileges as determined by the department.

3. Persons who have not completed the requirements for high school or a high school equivalency diploma may be required to complete the requirements for and to obtain a high school equivalency diploma under chapter 259A.

4. The department, in cooperation with the board of parole, shall adopt rules which establish a procedure for evaluation of inmates to determine basic skills achievement, and criteria for placement of inmates in educational programs. Rules adopted may include, but shall not be limited to, the establishment of standards for the development of appropriate programming, imposition of any applicable penalties, and for waiver of any educational requirements.

95 Acts, ch 179, §1
Submission of plans for implementation; report; 95 Acts, ch 179, §3
NEW section

904.701 Services required — gratuitous allowances — hard labor — rules.

1. An inmate of an institution shall be required to perform hard labor which is suited to the inmate's age, gender, physical and mental condition, strength, and attainments in the institution proper, in the industries established in connection with the institution, or at such other places as may be determined by the director. Substantially equivalent hard labor programs shall be available to both male and female inmates. When an inmate of an institution is working outside the institution proper, the inmate shall be deemed at all times to be in the actual custody of the superintendent of the institution. Inmates performing hard labor on chain gangs at a location other than within or on the grounds of a correctional institution shall be attired in brightly colored uniforms that readily identify them as inmates of correctional institutions. Inmates performing other types of hard labor at locations other than within or on the grounds of a correctional institution may also be required by the department to wear the brightly colored uniforms. Inmates not required to wear brightly colored uniforms while performing hard labor shall be otherwise clearly designated as inmates of correctional institutions. The employment of inmates in hard labor shall not displace employed workers, shall not be applied to skills, crafts, or trades in which a local surplus of labor exists, and shall not impair existing contracts for employment or services.

2. The director may when practicable pay the inmate an allowance as the director deems proper in view of the circumstances, and in view of the cost attending the maintenance of the inmate. The allowance is a gratuitous payment and is not a wage arising out of an employment relationship. The payment shall not exceed the amount paid to free labor for a like or equivalent service.

3. For purposes of this section, "hard labor" means physical or mental labor which is performed for a period of time which shall average, as nearly as possible, forty hours each week, and may include useful and productive work, chain gangs, menial labor, substance abuse or sex offender treatment

programs, any training necessary to perform any work required, and, if possible, work providing an inmate with marketable vocational skills. "Hard labor" does not include labor which is dangerous to an inmate's life or health, is unduly painful, or is required to be performed under conditions that would violate occupational safety and health standards applicable to such labor if performed by a person who is not an inmate.

4. Notwithstanding subsection 1, an inmate who has been determined by the director to be unsuitable for the performance of hard labor due to the inmate's age, gender, physical or mental condition, strength, or security status shall not be required to perform hard labor.

5. The department shall adopt rules to implement this section.

95 Acts, ch 166, §1

Full implementation of hard labor requirements enacted in 1995 amendments not required until July 1, 1997; incremental implementation plan; guidelines; report to general assembly; 95 Acts, ch 166, §2

Section amended

904.702 Deductions from inmate accounts.

If allowances are paid pursuant to section 904.701, the director shall establish an inmate account, for deposit of those allowances and for deposit of moneys sent to the inmate from a source other than the department of corrections. The director may deduct an amount, not to exceed ten percent of the amount of the allowance, unless the inmate requests a larger amount, to be deposited into the inmate savings fund as required under section 904.508, subsection 2. The director shall deduct from the inmate account an amount established by the inmate's restitution plan of payment. The director shall also deduct from any remaining account balance an amount sufficient to

pay all or part of any judgment against the inmate, including but not limited to judgments for taxes and child support, and court costs and fees assessed either as a result of the inmate's confinement or amounts required to be paid under section 610A.1. Written notice of the amount of the deduction shall be given to the inmate, who shall have five days after receipt of the notice to submit in writing any and all objections to the deduction to the director, who shall consider the objections prior to transmitting the deducted amount to the clerk of the district court. The director need give only one notice for each action or appeal under section 610A.1 for which periodic deductions are to be made. The director shall next deduct from any remaining account balance an amount sufficient to pay all or part of any costs assessed against the inmate for misconduct or damage to the property of others. The director may deduct and disburse an amount sufficient for industries' programs to qualify under the eligibility requirements established in the Justice Assistance Act of 1984, Pub. L. No. 98-473, including an amount to pay all or part of the cost of the inmate's incarceration. The director may pay all or any part of remaining allowances paid pursuant to section 904.701 directly to a dependent of the inmate, or may deposit the allowance to the account of the inmate, or may deposit a portion and allow the inmate a portion for the inmate's personal use.

The director, the institutional division, and the department shall not be liable to any person for any damages caused by the withdrawal or failure to withdraw money or the payment or failure to make any payment under this section.

95 Acts, ch 167, §6

Section amended

CHAPTER 905

COMMUNITY-BASED CORRECTIONAL PROGRAM

Legislative intent; operation of facilities over design capacity;
95 Acts, ch 207, §6

905.6 Duties of director.

The director employed by the district board under section 905.4, subsection 2, shall be qualified in the administration of correctional programs. The director shall:

1. Perform the duties and have the responsibilities delegated by the district board or specified by the Iowa department of corrections pursuant to this chapter.

2. Manage the district department's community-based correctional program, in accordance with the policies of the district board and the Iowa department of corrections.

3. Employ, with approval of the district board, and supervise the employees of the district department.

4. Prepare all budgets and fiscal documents, and certify for payment all expenses and payrolls lawfully incurred by the district department. The director may invest funds which are not needed for current expenses, jointly with one or more cities, city utilities, counties, or rural water districts created under chapter 357A pursuant to a joint investment agreement. All investment of funds shall be subject to sections 12B.10 and 12B.10A and other applicable law.

5. Act as secretary to the district board, prepare its agenda and record its proceedings. The district shall provide a copy of minutes from each meeting of the district board to the legislative fiscal bureau.

6. Develop and submit to the district board a plan for the establishment, implementation, and operation of a community-based correctional program in

that judicial district, which program conforms to the guidelines drawn up by the Iowa department of corrections under this chapter and which conform to rules, policies, and procedures pertaining to the supervision of parole and work release adopted by the director of the Iowa department of corrections concerning the community-based correctional program.

7. Negotiate and, upon approval by the district board, implement contracts or other arrangements

for utilization of local treatment and service resources authorized by section 905.4, subsection 9.

8. Administer the batterers' treatment program for domestic abuse offenders required in section 708.2B.

95 Acts, ch 77, §7
Subsection 4 amended

CHAPTER 906

PAROLES AND WORK RELEASE

906.4 Standards for release on parole or work release — community service — academic achievement.

A parole or work release shall be ordered only for the best interest of society and the offender, not as an award of clemency. The board shall release on parole or work release any person whom it has the power to so release, when in its opinion there is reasonable probability that the person can be released without detriment to the community or to the person. A person's release is not a detriment to the community or the person if the person is able and willing to fulfill the obligations of a law-abiding citizen, in the board's determination.

Notwithstanding section 13.10, the board may determine if the defendant shall be required to provide a physical specimen to be submitted for DNA profiling as a condition of parole or work release. The board shall consider the deterrent effect of DNA profiling, the likelihood of repeated violations by the offender, and the seriousness of the offense. When funds have been allocated from the general fund of the state, or funds have been provided by other public or private sources, the board shall order DNA profiling if appropriate.

The board may establish as a condition of a person's parole or work release that the person perform a specified number of hours of unpaid community service. The board shall not make community service a uniform or mandatory requirement for all or substantially all parolees or work release inmates but shall exercise discretion in ordering community service as a condition of parole or work release. The board shall report to the general assembly on the implementation of community service as a condition of parole or work release. The report shall be submitted on or before January 1, 1991.

The board may, effective July 1, 1997, subject to such exceptions as may be deemed necessary by the board, require each inmate who is physically and mentally capable to demonstrate functional literacy competence at or above the sixth grade level or make progress towards completion of the requirements for a high school equivalency diploma under chapter 259A prior to release of the inmate on parole or work release.

95 Acts, ch 179, §2
NEW unnumbered paragraph 4

CHAPTER 907

DEFERRED JUDGMENT, DEFERRED OR SUSPENDED SENTENCE AND PROBATION

907.3 Deferred judgment, deferred sentence or suspended sentence.

Pursuant to section 901.5, the trial court may, upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, exercise any of the options contained in this section. However, this section does not apply to a forcible felony.

1. With the consent of the defendant, the court may defer judgment and place the defendant on probation upon such conditions as it may require. Upon a showing that the defendant is not co-operating with

the program of probation or is not responding to it, the court may withdraw the defendant from the program, pronounce judgment, and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon fulfillment of the conditions of probation, the defendant shall be discharged without entry of judgment. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

However, this subsection shall not apply if any of the following is true:

a. The offense is a violation of section 709.8 and the child is twelve years of age or under.

b. The defendant previously has been convicted of a felony. "Felony" means a conviction in a court of this or any other state or of the United States, of an offense classified as a felony by the law under which the defendant was convicted at the time of the defendant's conviction.

c. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief, two or more times anywhere in the United States.

d. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief in a felony prosecution anywhere in the United States within the preceding five years, measured from the date of granting of deferment of judgment to the date of commission of the offense.

e. The defendant committed an assault as defined in section 708.1, against a peace officer in the performance of the peace officer's duty.

f. The defendant is a corporation.

g. The offense is a violation of section 321J.2 and, within the previous six years, the person has been convicted of a violation of that section or the person's driver's license has been revoked pursuant to section 321J.4, 321J.9, or 321J.12.

h. Prior to the commission of the offense the defendant had been granted a deferred judgment or deferred sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or was granted similar relief anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A, and the current offense is a violation of section 708.2A.

i. The offense is a conviction for or plea of guilty to a violation of section 236.8 or a finding of contempt pursuant to section 236.8 or 236.14.

2. At the time of or after pronouncing judgment

and with the consent of the defendant, the court may defer the sentence and assign the defendant to the judicial district department of correctional services. However, the court shall not defer the sentence for a violation of section 708.2A if the defendant has previously received a deferred judgment or sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or if similar relief was granted anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A. In addition, the court shall not defer a sentence if it is imposed for a conviction for or plea of guilty to a violation of section 236.8 or for contempt pursuant to section 236.8 or 236.14. Upon a showing that the defendant is not fulfilling the conditions of probation, the court may revoke probation and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

3. By record entry at the time of or after sentencing, the court may suspend the sentence and place the defendant on probation upon such terms and conditions as it may require including commitment to an alternate jail facility or a community correctional residential treatment facility for a specific number of days to be followed by a term of probation as specified in section 907.7. A person so committed who has probation revoked shall be given credit for such time served. However, the court shall not suspend the minimum term of two days imposed pursuant to section 708.2A, and the court shall not suspend a sentence imposed pursuant to section 236.8 or 236.14 for contempt.

95 Acts, ch 180, §16, 17
Subsection 1, paragraph i amended
Subsection 2 amended

CHAPTER 910

VICTIM RESTITUTION

910.2 Restitution or community service to be ordered by sentencing court.

In all criminal cases except simple misdemeanors under chapter 321, in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims of the offender's criminal activities, to the clerk of court for fines, penalties, surcharges, and, to the extent that the offender is reasonably able to pay, for crime victim assistance reimbursement, court costs, court-appointed attorney's fees, or the expense of a public defender when applicable. However, victims shall be paid in full before fines, penalties, and surcharges, crime victim com-

penation program reimbursement, court costs, court-appointed attorney's fees, or the expenses of a public defender are paid. In structuring a plan of restitution, the court shall provide for payments in the following order of priority: victim, fines, penalties, and surcharges, crime victim compensation program reimbursement, court costs, and court-appointed attorney's fees, or the expense of a public defender. When the offender is not reasonably able to pay all or a part of the crime victim compensation program reimbursement, court costs, court-appointed attorney's fees, or the expense of a public defender, the court may require the offender in lieu of that portion of the crime victim compensation program reimbursement, court costs, court-appointed attorney's

fees, or expense of a public defender for which the offender is not reasonably able to pay, to perform a needed public service for a governmental agency or for a private nonprofit agency which provides a service to the youth, elderly, or poor of the community. When community service is ordered, the court shall set a specific number of hours of service to be performed by the offender. The judicial district department of correctional services shall provide for the assignment of the offender to a public agency or private nonprofit agency to perform the required service.

95 Acts, ch 75, §1
Section amended

910.4 Condition of probation — payment plan.

When restitution is ordered by the sentencing court and the offender is placed on probation, restitution shall be a condition of probation. Failure of the offender to comply with the plan of restitution, plan of payment, or community service requirements when community service is ordered by the court as restitution, shall constitute a violation of probation and shall constitute contempt of court. The court may hold the offender in contempt, revoke probation, or extend the period of probation, or upon notice of such noncompliance and hearing thereon, the court may enter a civil judgment against the offender for the outstanding balance of payments under the plan of restitution and such judgment shall be governed by the law relating to judgments, judgment liens, executions, and other process available to creditors for the collection of debts. However, if the period of probation is extended it shall not be for more than the maximum period of probation for the offense committed as provided in section 907.7. After discharge from probation or after the expiration of the period of probation, the failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court. As part of the order discharging an offender from probation, the court shall enter a civil judgment against the offender for the balance, if any, of any restitution owed by the offender to the victim of the crime.

If an offender's probation is revoked, the offender's assigned probation officer shall forward to the director of the Iowa department of corrections, information concerning the offender's restitution plan, restitution plan of payment, the restitution payment balance, and any other pertinent information concerning or affecting restitution by the offender.

When the offender is committed to a county jail, or to an alternate facility, the office or individual charged with supervision of the offender shall prepare a restitution plan of payment taking into consideration the offender's income, physical and mental health, age, education, employment and family circumstances. The office or individual charged with supervision of the offender shall review the plan of restitution ordered by the court, and shall submit a restitution plan of payment to the sentencing court. When community service is ordered by the court as

restitution, the restitution plan of payment shall set out a plan to meet the requirement for the community service. The court may approve or modify the plan of restitution and restitution plan of payment. When there is a significant change in the offender's income or circumstances, the office or individual which has supervision of the plan of payment shall submit a modified restitution plan of payment to the court. When there is a transfer of supervision from one office or individual charged with supervision of the offender to another, the sending office or individual shall forward to the receiving office or individual all necessary information regarding the balance owed against the original amount of restitution ordered and the balance of public service required. When the offender's circumstances and income have significantly changed, the receiving office or individual shall submit a new plan of payment to the sentencing court for approval or modification based on the considerations enumerated in this section.

95 Acts, ch 127, §1
Unnumbered paragraph 1 amended

910.5 Condition of work release or parole.

1. When an offender is committed to the custody of the director of the Iowa department of corrections pursuant to a sentence of confinement, the sentencing court shall forward to the director, a copy of the offender's restitution plan, present restitution payment plan if any, and other pertinent information concerning or affecting restitution by the offender. However, if the offender is committed to the custody of the director after revocation of probation, this information shall be forwarded by the offender's probation officer.

An offender committed to a penal or correctional facility of the state shall make restitution while placed in that facility. Upon commitment to the custody of the director of the Iowa department of corrections, the director or the director's designee shall prepare a restitution plan of payment or modify any existing plan of payment. The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment, and family circumstances. The director or the director's designee may modify the plan of payment at any time to reflect the offender's present circumstances. After the expiration of the offender's sentence, the failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court. Upon the expiration of the offender's sentence, the department shall notify the court which sentenced the offender and the court shall enter a civil judgment against the offender for the balance, if any, of any restitution owed by the offender to the victim of the crime.

2. If an offender is to be placed on work release from an institution under the control of the director of the Iowa department of corrections, restitution shall be a condition of work release. The chief of the bureau of community correctional services of the

Iowa department of corrections shall prepare a restitution plan of payment or may modify any previously existing restitution plan of payment. The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment, and family circumstances. The bureau chief may modify the plan of payment at any time to reflect the offender's present circumstances. Failure of the offender to comply with the restitution plan of payment, including the community service requirement, if any, shall constitute a violation of a condition of work release and the work release privilege may be revoked. After the expiration of the offender's sentence, the failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court. Upon the expiration of the offender's sentence, the bureau chief shall notify the court which sentenced the offender and the court shall enter a civil judgment against the offender for the balance, if any, of any restitution owed by the offender to the victim of the crime.

3. If an offender is to be placed on work release from a facility under control of a county sheriff or the judicial district department of correctional services, restitution shall be a condition of work release. The office or individual charged with supervision of the offender shall prepare a restitution plan of payment or may modify any previously existing restitution plan of payment. The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment and family circumstances. Failure of the offender to comply with the restitution plan of payment including the community service requirement, if any, constitutes a violation of a condition of work release. The office or individual charged with supervision of the offender may modify the plan of restitution at any time to reflect the offender's present circumstances. After the expiration of the offender's sentence, the failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court. Upon the expiration of the offender's sentence, the office or individual charged with supervision of the offender shall notify the court which sentenced

the offender and the court shall enter a civil judgment against the offender for the balance, if any, of any restitution owed by the offender to the victim of the crime.

4. If an offender is to be placed on parole, restitution shall be a condition of parole. The district department of correctional services to which the offender will be assigned shall prepare a restitution plan of payment or may modify any previously existing restitution plan of payment. The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment, and family circumstances. Failure of the offender to comply with the restitution plan of payment including a community service requirement, if any, shall constitute a violation of a condition of parole. The parole officer may modify the plan of payment any time to reflect the offender's present circumstances. A restitution plan of payment or modified plan of payment, prepared by a parole officer, must meet the approval of the director of the district department of correctional services. After the expiration of the offender's sentence, the failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court. Upon the expiration of the offender's sentence, the parole officer shall notify the court which sentenced the offender and the court shall enter a civil judgment against the offender for the balance, if any, of any restitution owed by the offender to the victim of the crime.

5. The director of the Iowa department of corrections shall promulgate rules pursuant to chapter 17A concerning the policies and procedures to be used in preparing and implementing restitution plans of payment for offenders who are committed to an institution under the control of the director of the Iowa department of corrections, for offenders who are to be released on work release from institutions under the control of the director of the Iowa department of corrections, for offenders who are placed on probation, and for offenders who are released on parole.

95 Acts, ch 127, §2, 3

Subsection 1, unnumbered paragraph 2 amended

Subsections 2, 3, and 4 amended

CHAPTER 910A

VICTIM AND WITNESS PROTECTION

910A.9A Notification by department of human services.

The department of human services shall notify a victim registered with the department, regarding a juvenile adjudicated delinquent for a violent crime, committed to the custody of the department of human services, and placed at the state training school at Eldora or Toledo, or regarding a person determined

to be a sexually violent predator under chapter 709C,* and committed to the custody of the department of human services, of the following:

1. The date on which the juvenile or sexually violent predator is expected to be temporarily released from the custody of the department of human services, and whether the juvenile is expected to return to the community where the registered victim resides.

2. The juvenile's or the sexually violent predator's escape from custody.
3. The recommendation by the department to consider the juvenile or sexually violent predator for release or placement.
4. The date on which the juvenile or sexually

violent predator is expected to be released from a facility pursuant to a plan of placement.

95 Acts, ch 144, §5

*Chapter 709C takes effect July 1, 1997; see §709C.12
Section amended

CHAPTER 912

CRIME VICTIM COMPENSATION

912.1 Definitions.

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

1. "*Compensation*" means moneys awarded by the department as authorized by this chapter.

2. "*Crime*" means conduct that occurs or is attempted in this state, poses a substantial threat of personal injury or death, and is punishable as a felony or misdemeanor, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this state. "*Crime*" does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, motorcycle, motorized bicycle, train, boat, or aircraft except for violations of section 321.261, 321.277, 321J.2, 462A.14, or 707.6A, or when the intention is to cause personal injury or death. A license revocation under section 321J.9 or 321J.12 shall be considered by the department as evidence of a violation of section 321J.2 for the purposes of this chapter.

3. "*Department*" means the department of justice.

4. "*Dependent*" means a person wholly or partially dependent upon a victim for care or support and includes a child of the victim born after the victim's death.

5. "*Secondary victim*" means the victim's spouse, children, parents, and siblings, and any person who resides in the victim's household at the time of the crime or at the time of the discovery of the crime. Secondary victim does not include persons who are the survivors of a victim who dies as a result of a crime.

6. "*Victim*" means a person who suffers personal injury or death as a result of any of the following:

- a. A crime.
- b. The good faith effort of a person attempting to prevent a crime.
- c. The good faith effort of a person to apprehend a person suspected of committing a crime.

95 Acts, ch 85, §1

NEW subsection 5 and former subsection 5 renumbered as 6

912.6 Computation of compensation.

The department shall award compensation, as appropriate, for any of the following economic losses incurred as a direct result of an injury to or death of the victim:

1. Reasonable charges incurred for medical care not to exceed ten thousand five hundred dollars.

Reasonable charges incurred for mental health care not to exceed three thousand dollars which includes services provided by a psychologist licensed under chapter 154B, a person holding at least a master's degree in social work or counseling and guidance, or a victim counselor as defined in section 236A.1.

2. Loss of income from work the victim would have performed and for which the victim would have received remuneration if the victim had not been injured not to exceed six thousand dollars.

3. Reasonable replacement value of clothing that is held for evidentiary purposes not to exceed one hundred dollars.

4. Reasonable funeral and burial expenses not to exceed five thousand dollars.

5. Loss of support for dependents resulting from death or a period of disability of the victim of sixty days or more not to exceed two thousand dollars per dependent or a total of six thousand dollars.

6. In the event of a victim's death, reasonable charges incurred for counseling the victim's spouse, children, parents, siblings, or persons cohabiting with or related by blood or affinity to the victim if the counseling services are provided by a psychologist licensed under chapter 154B, a victim counselor as defined in section 236A.1, subsection 1, or an individual holding at least a master's degree in social work or counseling and guidance, and reasonable charges incurred by such persons for medical care counseling provided by a psychiatrist licensed under chapter 147 or 150A. The allowable charges under this subsection shall not exceed three thousand dollars per person or a total of six thousand dollars per victim death.

7. Reasonable expenses incurred for cleaning the scene of a homicide, if the scene is a residence, not to exceed one thousand dollars.

8. Reasonable charges incurred for mental health care for secondary victims which includes the services provided by a psychologist licensed under chapter 154B, a person holding at least a master's in social work, counseling, or a related field, a victim counselor as defined in section 236A.1, or a psychiatrist licensed under chapter 147, 148, or 150A. The allowable charges under this subsection shall not exceed one thousand dollars per secondary victim or a total of six thousand dollars.

95 Acts, ch 85, §2, 3

Subsection 2 amended
NEW subsection 8

CHAPTER 914

REPRIEVES, PARDONS, COMMUTATIONS, REMISSIONS, AND RESTORATIONS OF RIGHTS

914.2 Right of application.

Except as otherwise provided in section 902.2, a person convicted of a criminal offense has the right to make application to the board of parole for recommendation or to the governor for a reprieve, pardon, commutation of sentence, remission of fines or forfeitures, or restoration of rights of citizenship at any time following the conviction.

95 Acts, ch 128, §2
Section amended

914.3 Recommendations by board of parole.

1. Except as otherwise provided in section 902.2, the board of parole shall periodically review all applications by persons convicted of criminal offenses and shall recommend to the governor the reprieve, pardon, commutation of sentence, remission of fines

or forfeitures, or restoration of the rights of citizenship for persons who have by their conduct given satisfactory evidence that they will become or continue to be law-abiding citizens.

2. The board of parole shall, upon request of the governor, take charge of all correspondence in reference to an application filed with the governor and shall, after careful investigation, provide the governor with the board's advice and recommendation concerning any person for whom the board has not previously issued a recommendation.

3. All recommendations and advice of the board of parole shall be entered in the proper records of the board.

95 Acts, ch 128, §3
Subsection 1 amended



CODE EDITOR'S NOTES

Code Section

- 13B.8** The multiple amendments do not conflict, so they were harmonized to give effect to each, as required by Code section 4.11. In some cases where the note for this section is referred to, the amendments are identical. It was generally assumed that a strike or repeal prevails over an amendment to the same material and does not create a conflict. In section 13B.8 the language of the 1991 Code was restored effective July 1, 1995, pursuant to instructions contained in 1991 Acts, chapter 268, section 439. The amendment in 1995 Acts, chapter 67, section 3, also effective July 1, 1995, was harmonized with the restored version.
- 257.16** 1994 Acts, chapter 1023, section 44, amended unnumbered paragraph 2 of the 1993 Code by striking the last sentence effective July 1, 1994, and the amendment was codified in the 1995 Code. However, 1994 Acts, chapter 1181, section 12, also amended unnumbered paragraph 2 of the 1993 Code by striking the last two sentences, but the effective date of the amendment was delayed until July 1, 1995. See 1994 Acts, chapter 1181, section 18, and 1995 Acts, chapter 214, sections 10 and 11. The amendments did not conflict, so they were harmonized, as required by Code section 4.11, to give effect to each at their respective effective dates.
- 321.189** 1995 Acts, chapter 67, section 25, amends the dates contained in subsection 7, paragraphs "a" and "b" to correspond the text of exceptions to the motorcycle education requirements with the effective date of the requirements contained in 1994 Acts, chapter 1102, section 4, as amended by 1994 Acts, chapter 1199, section 52. However, in a later enactment, 1995 Acts, chapter 118, section 22, the text is amended with a different date to correspond with provisions which amend the effective date of the 1994 amendments. See 1995 Acts, chapter 118, sections 37 and 39. The later enactment was codified.
- 455D.3** The lead-in for 1995 Acts, chapter 209, section 25, is incomplete. It appears from the context that the amendment to section 455D.3, subsection 3, paragraph "c" (relettered as "b" in 1995 Acts, chapter 80, section 2), affects only unnumbered paragraph 2 of the lettered paragraph. See 1995 Acts, chapter 80, section 2, for the text of unnumbered paragraph 1 of paragraph "b".
- 600A.5** 1995 Acts, chapter 49, section 21, amends subsection 3, paragraph "c", by extending the list of grounds for termination of parental rights for which an explanatory statement is required. In a later enactment, 1995 Acts, chapter 182, section 25, the references to specific grounds for termination of parental rights are stricken, so that the explanatory statement is required for any of the grounds listed in section 600A.8. The later enactment was codified.

**CONVERSION TABLES OF SENATE AND HOUSE FILES
AND JOINT RESOLUTIONS TO
CHAPTERS OF THE ACTS OF THE GENERAL ASSEMBLY**

1995 REGULAR SESSION

SENATE FILES

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69	206	207	101	386	75
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	6	321.20A		24, 25	Note under Ch 144, Ch 331, Ch 595, Ch 602
	7	Note under Ch 321, 321.34; will be codi- fied in 1997 Code		26	Note under Ch 144, Ch 331, Ch 595, Ch 602 and partially omitted
	8	321.34(4)	125	1	535.2(7)
	9	321.34(7)		2	262A.5(8)
	10	321.35		3	562A.6(15)
	11	321.47		4	562A.21(1)
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	8	216.15(1)	142	1	422.45(38A)
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132	1	70A.26		14	Omitted
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